TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 36

MICHAEL F. McDONALD, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 8, 1944.

CERTIORARI GRANTED APRIL 10, 1944.

TABLE OF CONTENTS OF APPENDIX.

Appendix.

RELEVANT DOCKET ENTRIES.

Nov. 7, 1941.	Petition received and filed. Taxpayer notified. Fee paid.
Nov. 7, 1941.	Copy of petition served on General Counsel.
Dec. 31, 1941.	Answer filed by General Counsel.
Dec. 31, 1941.	Request for hearing in Philadelphia, Pa., calendar.
Jan. 5, 1942.	Notice issued placing proceeding on Philadelphia, Pa., calendar.
Apr. 10, 1942.	Hearing set May 18, 1942, Philadelphia, Pa.
May 18, 1942.	Hearing had before Mr. Tyson; petitioner's motion to continue, granted. Appearance of F. E. S. Morrison filed.
May 18, 1942.	Order—proceeding continued to next Philadelphia calendar—entered.
July 25, 1942.	Hearing set Sept. 14, 1942, Philadelphia, Pa.
Sept. 17, 1942.	Hearing had before Mr. Hill, on the merits. Submitted. Stipulation of facts. Appearance of John W. Bodine filed at hearing. Briefs due 11/2/42. Reply briefs due 11/17/42. Motion of petitioner to file amended petition. Granted.
Sept. 18, 1942.	Amended petition filed at Philadelphia, Pa., 9/18/42 copy served.
Oct. 9, 1942.	Answer to amended petition filed by General Counsel. 10/12/42 copy served.

Oct. 7, 1942.	Transcript of hearing 9/17/42 filed at Philadelphia, Pa.
Oct. 23, 1942.	Motion for leave to file stipulation of corrections of the report of proceedings. Stipulation of corrections in the report attached, filed by taxpayer.
Oct. 27, 1942.	Brief filed by General Counsel. 12/2/42 copy served.
Oct. 29, 1942.	Motion for extension to Nov. 23, 1942, to file both briefs filed by taxpayer. 10/30/42 granted.
Oct. 30, 1942.	Motion for leave to file stipulation, etc., filed 10/23/42, granted.
Nov. 20, 1942.	Motion for extension to Dec. 3, 1942, to file simultaneous briefs and to Dec. 18, 1942, to file reply briefs filed by taxpayer. Granted.
Dec. 2, 1942.	Motion for leave to file second amended petition, second amended petition lodged, filed by taxpayer. 12/16/42 granted. 12/18/42 copy served on General Counsel.
Dec. 2, 1942.	Brief filed by taxpayer. 12/2/42 copy served on General Counsel.
Dec. 29, 1942.	Answer to second amended petition filed by General Counsel.
Mar. 10, 1943.	Findings of fact and opinion rendered, Hill, Judge, Div. 2. Decision will be entered for respondent. 3/10/43 copy served.
Mar. 10, 1943.	Decision entered. Kern, Judge, Div. 16.
Apr. 5, 1943.	Petition for review by U. S. Circuit Court of Appeals, 3rd Circuit, filed by taxpayer.

Apr. 5, 1943. Designation of record filed by taxpayer.

Apr. 6, 1943. Notice of filing petition for review sent to J. P. Wenchel filed.

Apr. 7, 1943. Proof of service of filing petition for review (J. P. Wenchel) filed.

Apr. 17, 1943. Amended designation of record filed by taxpayer with proof of service thereon.

PETITION.

(Filed November 7, 1941.)

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency SN-IT-1, dated August 9, 1941, and as a basis of his proceeding he alleges as follows:

(1)

The petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the collector for the Eastern District of Pennsylvania.

(2)

The notice of deficieney (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 9, 1941.

(3)

The taxes in controversy are income taxes for the taxable year ended December 31, 1939, and in the amount of $2,506.77.

(4)

The determination of the tax set forth in the same notice of deficiency is based upon the following errors: (a) Disallowance of the item of $13,017.20, claimed as the deduction from gross income and representing "reelection expenses."

(5)

The facts upon which the Petitioner relies for the basis of this proceeding are as follows:

(a) In 1939 Petitioner was a candidate to succeed himself as Judge of the Court of Common Pleas of Luzerne County, Pennsylvania.

(b) Petitioner incurred expenses of $13,017.27 in the campaign, an itemized copy of such expenses as certified to the Secretary of the Commonwealth of Pennsylvania by petitioner is herewith attached and marked "Exhibit B".

(c) Petitioner deducted this amount from gross income as an ordinary and necessary expense.

(d) The Respondent disallowed such deduction.

WHEREFORE, the Petitioner prays that this Board may hear the proceeding and decree that such deduction was correctly made by Petitioner and should be allowed.

MICHAEL F. McDONALD,
918 Miners Bank Bldg.,
Wilkes-Barre, Pa.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF LUZERNE, } *ss.:*

M. F. McDONALD, being duly sworn, doth depose and say that he is the petitioner above named, that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true to the best of his knowledge and belief.

M. F. McDONALD.

Sworn to and subscribed before me this 6th day of November, A. D. 1941.

LAWRENCE C. McHUGH,
(Seal) *Notary Public.*
My commission expires: April 13, 1945.

EXHIBIT A.

SN-IT-1

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Philadelphia, Pa.

Office of
INTERNAL REVENUE AGENT IN CHARGE
Room 1100 Gimbel Building
Philadelphia Division

August 9, 1941.

Mr. Michael F. McDonald,
6 Brown Street,
Ashley, Pennsylvania.

Sir:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1939, discloses a deficiency of $2,506.77, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing

the form, or on the date assessment is made, whichever is earlier.

Respectfully,

Guy T. Helvering,
Commissioner,
By G. J. Wilson
Internal Revenue Agent in Charge.

Enclosures:

Statement
Form of waiver
Form 272M

BMN/pk

Exhibit A

STATEMENT

MICHAEL F. McDONALD
6 Brown Street,
Ashley, Pennsylvania.

Tax Liability for Taxable Year Ended December 31, 1939

	Liability	Assessed	Deficiency
Income Tax	$3,524.79	$1,018.02	$2,506.77

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 6, 1940, to your protest dated January 7, 1941, and to the statements made at conferences held March 6, 1941 and July 23, 1941

Adjustments to Net Income

Net income as disclosed by return		$15,783.54
Unallowable deductions and additional income:		
(a) Salary	$1,000.00	
(b) Expenses	13,017.27	
(c) Contributions	7.00	
		14,024.27
Net income adjusted		$29,807.81

Explanation of adjustments

(a) Unreported Salary received.

(b) The item of $13,017.27 claimed as a deduction from gross income on your 1939 Federal income tax return and alleged to represent "Re-election expenses" is disallowed, for the reason that such alleged expenditure does not represent an ordinary and necessary business expense.

Computation of Tax

Net income adjusted	$29,807.81
Less: Personal exemption	2,500.00
Balance (surtax net income)	27,307.81
Less: Earned income credit	1,400.00
Net income subject to normal tax	25,907.81
Normal tax at 4 per cent on $25,907.81	1,036.31
Surtax on $27,307.81	2,488.48
Total tax	3,524.79
Correct income tax liability	3,524.79
Income tax assessed (Account #200879)	1,018.02
Deficiency of income tax	$2,506.77

EXHIBIT B.

EXPENDITURES, DISBURSEMENTS, ETC.

Date Paid 1939	To Whom Paid or Promised		Amount
September 29	Wyoming Valley Poster Advertising Co.	Advertising	$ 300.00
September 30	Alice Logue	Clerk	25.00
October 3	The Press	Advertising	10.00
October 3	The Most Precious Blood	Advertising	10.00
October 3	John Malinowski, Treasurer, Luzerne County Democratic Committee	Election expenses	4,000.00
October 3	Wyoming Valley Poster Advertising Co.	Advertising	386.70
October 9	Wilkes-Barre Post Office	Posting Permit	10.00
October 12	Remington Rand, Inc.	Typewriter rental	3.00
October 14	Alice Logue	Clerk	25.00
October 23	Robert Haimes	Expressage	27.23
October 25	St. Casimer's Church	Advertising	25.00
October 27	Robert Haimes	Advertising	145.23
October 27	John Malinowski, Treasurer, Luzerne County Democratic Committee	Election expenses	3,000.00
October 30	Remington Rand, Inc.	Typewriter rental	3.00

October 31	Alice Logue	Clerk	25.00
November 1	Wilkes-Barre Postmaster	Postage	300.00
November 1	Robert Haimes	Advertising	175.00
November 1	John H. Bonin	Advertising	256.77
November 2	The Collins Press	Advertising	12.75
November 3	The Collins Press	Advertising	126.11
November 3	Clerk		15.00
November 6	Alice Logue	Clerk	9.35
November 6	Robert Haimes	Postage	2.50
November 13	Clerks		50.00
November 22	Wilkes-Barre Record	Advertising	6.72
November 20	Drifton Fearnots	Advertising	5.00
September 13 to November 6	Travelling expenses and personal expenses incident thereto		369.75
		Total	$9,323.11
April 10	Craftsmen Engravers	Advertising	2.50
April 20	Craftsmen Engravers	Advertising	4.00
May 4	Ace Hoffman	Advertising	1.00
July 10	Postmaster of Wilkes-Barre	Postage	25.00
July 20	Secretary of the Commonwealth	Filing nomination petitions	35.00
July 20	Secretary of the Commonwealth	Filing nomination petitions	35.00

Exhibit B

Date Paid 1939		To Whom Paid or Promised		Amount
July	31	The Collins Press	Printing	93.50
July	31	Leroy Reese	Printing	44.00
August	1	Marie Gray	Clerk	25.00
August	2	Dr. Frank Publiese, City Treas.	Telephone tolls	5.25
August	3	Craftsmen Engravers	Advertising	2.50
August	4	The Collins Press	Printing	77.75
August	7	Postmaster of Wilkes-Barre	Postage	20.06
August	7	Postmaster of Wilkes-Barre	Postage	100.30
August	9	Ruth Smith	Clerk	21.35
August	9	Wilkes-Barre Postmaster	Postage	50.15
August	9	Leroy F. Reese	Printing	13.00
August	10	Postmaster of Hazleton	Postage	10.03
August	10	Green Gables	Advertising	9.00
August	11	Wilkes-Barre Postmaster	Postage	20.06
August	14	Postmaster of Nanticoke	Postage	10.03
August	14	Postmaster of Plymouth	Postage	10.03
August	15	Postmaster of Wilkes-Barre	Postage	5.03
August	15	Postmaster of Nanticoke	Postage	20.06
August	17	Postmaster of Pittston	Postage	20.06
August	21	The Collins Press	Printing	87.14
August	21	Craftsmen Engravers	Advertising	35.00

August	21	Leroy F. Reese	Printing	16.85
August	23	Charles Deitrich	Advertising	30.00
August	23	Leroy F. Reese	Printing	10.50
August	23	The Collins Press	Printing	4.25
August	23	Leroy F. Reese	Printing	3.45
August	24	Postmaster of Ashley	Postage	15.03
August	24	Postmaster of Ashley	Postage	10.03
August	25	Postmaster of Kingston	Postage	35.12
August	25	The Collins Press	Printing	104.75
August	25	Pioneer Fire Dept. of Pringle	Advertising	10.00
August	26	Remington Rand, Inc.	Typewriter rental	12.00
August	28	Leroy F. Reese	Printing	12.70
August	25	Michael Wincler	Advertising	5.00
August	28	Tom Callahan, Treasurer, Political Committee		1,000.00
August	28	Hazleton Broadcasting Co.	Radio	23.40
August	30	Dr. Frank Publiese, Cty. Treas.	Telephone Tolls	.40
August	31	Alice Logue	Clerk	30.01
August	31	Leroy F. Reese	Printing	9.10
August	31	Postmaster of Freeland	Postage	20.06
September	1	The Collins Press	Printing	3.50
September	1	The Labor News	Advertising	17.50
September	2	C. H. Dietrich	Advertising	20.00

Exhibit B

Date Paid 1939	To Whom Paid or Promised		Amount
September 2	Lockhart Club	Advertising	10.00
September 2	Leroy E. Reese	Printing	5.35
September 2	Wilkes-Barre Independent Co.	Advertising	39.00
August 23		Clerks' hire	140.00
September 2	The Collins Press	Printing	37.00
September 2	Anthracite Tri-District News	Advertising	17.50
September 6	The Dallas Post, Inc.	Advertising	22.00
September 6	Wilkes-Barre Record	Advertising	38.00
September 6	Postmaster of Wilkes-Barre	Postage	40.12
September 6	The Pittston Gazette Co.	Advertising	6.00
September 7	Deemer & Company	Stationery	1.50
September 7	The Catholic Light	Advertising	15.00
September 7	The Collins Press	Printing	38.00
September 7	Leroy F. Reese	Printing	3.20
September 7	WBAX	Radio	15.00
September 7	Leroy F. Reese	Printing	3.70
September 11	Polish Weekly Gornik	Advertising	12.00
September 11	Bratstvo	Advertising	16.00
September 11	Leroy F. Reese	Printing	20.85
September 13	The Catholic Light	Advertising	15.00
September 13	The Leader Publishing Company	Advertising	43.22

September 13	Anthracite Tri-District News	Advertising	8.00
September 13	A. O. H. of Lackawanna County	Advertising	3.25
September 13	The Plain Speaker-Standard Sentinel	Advertising	8.00
September 15	Alice Logue	Clerk	25.00
September 15	The Greater Pittston Review	Advertising	23.75
September 14	The Collins Press	Printing	153.25
September 14	The Leader Publishing Company	Advertising	23.52
September 15	The Pittston Bulletin	Advertising	4.00
August 21	Michael Wincler	Advertising	5.00
September 15	The Collins Press	Printing	138.00
September 2	Polish Nat'l Alliance	Advertising	5.00
September 25	Robert Hughes	Advertising	5.00
September 26	The Leader Publishing Company	Advertising	5.00
August 17	John J. Keeny	Advertising	30.00
August 17	John J. McAndrew	Advertising	30.00
September 4	John J. Keeny	Advertising	30.00
September 4	John J. McAndrew	Advertising	30.00
June 24	Travelling expenses and personal expenses incident thereto		9.50
June 25	Travelling expenses and personal expenses incident thereto		9.50
June 26	Travelling expenses and personal expenses incident thereto		9.50
June 29	Travelling expenses and personal expenses incident thereto		2.50
July 2	Travelling expenses and personal expenses incident thereto		9.00

Exhibit B

Date Paid 1939		To Whom Paid or Promised	Amount
July	4	Travelling expenses and personal expenses incident thereto	9.50
July	9	Travelling expenses and personal expenses incident thereto	9.50
July	10	Travelling expenses and personal expenses incident thereto	9.50
July	12	Travelling expenses and personal expenses incident thereto	6.00
July	13	Travelling expenses and personal expenses incident thereto	3.50
July	14	Travelling expenses and personal expenses incident thereto	6.50
July	15	Travelling expenses and personal expenses incident thereto	8.50
July	16	Travelling expenses and personal expenses incident thereto	9.50
July	17	Travelling expenses and personal expenses incident thereto	9.50
July	18	Travelling expenses and personal expenses incident thereto	7.50
July	19	Travelling expenses and personal expenses incident thereto	9.50
July	20	Travelling expenses and personal expenses incident thereto	3.50
July	21	Travelling expenses and personal expenses incident thereto	9.50
July	25	Travelling expenses and personal expenses incident thereto	9.50
July	27	Travelling expenses and personal expenses incident thereto	7.50
July	28	Travelling expenses and personal expenses incident thereto	2.50
July	29	Travelling expenses and personal expenses incident thereto	9.50
July	30	Travelling expenses and personal expenses incident thereto	9.50
July	31	Travelling expenses and personal expenses incident thereto	3.50
August	1	Travelling expenses and personal expenses incident thereto	8.50
August	2	Travelling expenses and personal expenses incident thereto	9.50

August	3	Travelling expenses and personal expenses incident thereto	5.50
August	5	Travelling expenses and personal expenses incident thereto	9.50
August	6	Travelling expenses and personal expenses incident thereto	9.50
August	7	Travelling expenses and personal expenses incident thereto	5.00
August	8	Travelling expenses and personal expenses incident thereto	2.00
August	11	Travelling expenses and personal expenses incident thereto	2.50
August	12	Travelling expenses and personal expenses incident thereto	9.50
August	13	Travelling expenses and personal expenses incident thereto	9.50
August	15	Travelling expenses and personal expenses incident thereto	9.50
August	16	Travelling expenses and personal expenses incident thereto	9.50
August	17	Travelling expenses and personal expenses incident thereto	7.50
August	20	Travelling expenses and personal expenses incident thereto	9.50
August	21	Travelling expenses and personal expenses incident thereto	9.50
August	22	Travelling expenses and personal expenses incident thereto	5.00
August	23	Travelling expenses and personal expenses incident thereto	9.50
August	24	Travelling expenses and personal expenses incident thereto	5.00
August	25	Travelling expenses and personal expenses incident thereto	12.50
August	26	Travelling expenses and personal expenses incident thereto	9.50
August	27	Travelling expenses and personal expenses incident thereto	9.50
August	28	Travelling expenses and personal expenses incident thereto	3.50
August	29	Travelling expenses and personal expenses incident thereto	3.50
August	30	Travelling expenses and personal expenses incident thereto	9.50
August	31	Travelling expenses and personal expenses incident thereto	9.50

Exhibit B

Date Paid 1939	To Whom Paid or Promised	Amount
September 1	Travelling expenses and personal expenses incident thereto	9.50
September 2	Travelling expenses and personal expenses incident thereto	9.50
September 3	Travelling expenses and personal expenses incident thereto	9.50
September 4	Travelling expenses and personal expenses incident thereto	6.00
September 6	Travelling expenses and personal expenses incident thereto	9.50
September 7	Travelling expenses and personal expenses incident thereto	9.50
September 8	Travelling expenses and personal expenses incident thereto	8.00
September 9	Travelling expenses and personal expenses incident thereto	5.00
September 10	Travelling expenses and personal expenses incident thereto	9.50
		$3,694.16

ANSWER.

(Filed December 31, 1941.)

Now comes the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition in the above-entitled proceeding, admits and denies as follows:

(1) Admits that the petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania; denies the remaining allegations of paragraph (1) of the petition.

(2) Admits that the notice of deficiency was mailed to the petitioner on August 9, 1941; denies the remaining allegations of paragraph (2) of the petition.

(3) Admits that the tax in controversy is income tax for the taxable year 1939; denies the remaining allegations of paragraph (3) of the petition.

(4) Denies the allegations of paragraph (4) of the petition.

(5) (a) and (b) Denies the allegations of paragraphs (5) (a) and (b) of the petition.

(c) Admits that the petitioner deducted the amount of $13,017.27 from gross income on his income tax return for the taxable year ended December 31, 1939; denies the remaining allegations of paragraph (5) (c) of the petition.

(5) (d) Admits that the respondent disallowed the deduction as claimed; denies the remaining allegations of paragraph (5) (d) of the petition.

(6) Denies generally each and every allegation of the petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

HARTFORD ALLEN,
Division Counsel,
PAUL E. WARING,
Special Attorney,
Bureau of Internal Revenue.

AMENDED PETITION.

(Filed September 18, 1942.)

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (symbols SN:IT:1, BMN:pk), dated August 9, 1941, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the collector for the Twelfth District of Pennsylvania.

2. The notice of deficiency (a copy of which is attached to the Stipulation of Facts filed in this proceeding, marked Exhibit "A") was mailed to the petitioner on August 9, 1941.

3. The taxes in controversy are income taxes for the taxable year ended December 31, 1939, in the amount of

$2,383.02, the deficiency proposed by the respondent in his notice of deficiency aforesaid being $2,506.77.

4. The determination of the tax set forth in the same notice of deficiency is based upon the following errors:

(a) Disallowance of the item of $13,017.27, claimed as a deduction from gross income and representing "reelection expenses."

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) During 1939 petitioner was a candidate in the primary and general elections to succeed himself as judge of the Court of Common Pleas of Luzerne County.

(b) During 1939 petitioner paid out from his own funds expenses totaling $13,017.27 in his campaigns, in the primary election to obtain the nomination, and in the general election to retain his office, as judge as aforesaid. An itemized statement of the said expenses as certified by petitioner in accordance with the Election Code of Pennsylvania is attached to the original petition and marked Exhibit "B".

(c) On his 1939 income tax return, petitioner deducted these expenses totaling $13,017.27 from his gross income.

(d-1) Petitioner submits that these expenses totaling $13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 in carrying on his trade or business within section 23 (a) (1) of the Internal Revenue Code.

(d-2) In the alternative, petitioner contends he sustained a loss during 1939 incurred in a transaction entered into for profit in the amount of $13,017.27, being the expenses aforesaid, within section 23 (e) of the Internal Revenue Code.

(e) Petitioner's taxable net income for the calendar year 1939 was not greater than $16,790.54.

WHEREFORE the petitioner prays that this Board may hear the proceeding and determine

(a) That the said expenses of $13,017.27 constitute an allowable deduction from petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred in the taxpayer's trade or business;

(b) In the alternative, that the petitioner sustained during 1939 a loss in a transaction entered into for profit in the amount of $13,017.27;

(c) That the petitioner's taxable net income for 1939 was not greater than $16,790.54;

(d) That there is a deficiency in petitioner's 1939 income tax of not more than $123.75.

(s) FREDERICK E. S. MORRISON,
(s) JOHN W. BODINE,
1429 Walnut Street,
Philadelphia, Penna.,
Counsel for Petitioner.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

MICHAEL F. MCDONALD, being duly sworn according to law, deposes and says that he is the within named Petitioner; that he has read the foregoing Amended Petition and is familiar with the statements contained therein, and that the facts stated therein are true.

(s) M. F. MCDONALD.

Sworn to and subscribed before me this 18th day of September, 1942.

(s) ALFRED JOHN MOCCIA,
(Seal) *Notary Public.*
My commission expires January 27, 1945.

ANSWER TO AMENDED PETITION.

(Filed October 9, 1942.)

Now comes the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition in the above-entitled proceeding admits and denies as follows;

1. Admits the allegations of paragraph 1 of the amended petition.

2. Admits the allegations of paragraph 2 of the amended petition.

3. Admits that the tax in controversy is income tax for the taxable year 1939; admits that the deficiency proposed by the respondent is $2,506.77; denies the remaining allegations of paragraph 3 of the amended petition.

4. (a) Denies the allegations of paragraph 4 (a) of the amended petition.

5. (a) to (e) Denies the allegations of paragraphs 5 (a) to (e), inclusive, of the amended petition.

6. Denies generally each and every allegation of the amended petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the amended petition be denied.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

HARTFORD ALLEN,
Division Counsel,
MYRON S. WINER,
Special Attorney,
Bureau of Internal Revenue.

SECOND AMENDED PETITION.

(Filed December 2, 1942.)

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (symbols SN:IT:1, BMN:pk), dated August 9, 1941, and as a basis of his proceeding alleges as follows:

1. The Petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the Collector for the Twelfth District of Pennsylvania.

2. The Notice of Deficiency (a copy of which is attached to the Stipulation of Facts filed in this proceeding, marked Exhibit "A") was mailed to the Petitioner on August 9, 1941.

3. The taxes in controversy are income taxes for the taxable year ended December 31, 1939, in the amount of $2,383.02, the deficiency proposed by the Respondent in his Notice of Deficiency aforesaid being $2,506.77.

4. The determination of the tax set forth in the same Notice of Deficiency is based upon the following errors:

(a) Disallowance of the item of $13,017.27, claimed as a deduction from gross income and representing "reelection expenses."

5. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

(a) During 1939 Petitioner was a candidate in the Primary and General Elections to succeed himself as Judge of the Court of Common Pleas of Luzerne County.

(b) During 1939 Petitioner paid out from his own funds expenses totaling $13,017.27 in his campaigns, in the Primary Election to obtain the nomination, and in the Gen-

eral Election to retain his office, as Judge as aforesaid. An itemized statement of the said expenses as certified by Petitioner in accordance with the Election Code of Pennsylvania is attached to the original Petition and marked Exhibit "B".

(c) On his 1939 income tax return, Petitioner deducted these expenses totaling $13,017.27 from his gross income.

(d-1) Petitioner submits that these expenses totaling $13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 in carrying on his trade or business within Section 23 (a) (1) of the Internal Revenue Code.

(d-2) In the alternative, Petitioner contends he sustained a loss during 1939 incurred in a transaction entered into for profit in the amount of $13,017.27, being the expenses aforesaid, within Section 23 (e) of the Internal Revenue Code.

(d-3) In the alternative, Petitioner contends that the said expenses totaling $13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 for the production or collection of income, within Section 23 (a) (2) of the Internal Revenue Code, as added by Section 121 (a) of the Revenue Act of 1942.

(e) Petitioner's taxable net income for the calendar year 1939 was not greater than $16,790.54.

WHEREFORE the Petitioner prays that this Board may hear the proceeding and determine

(a) That the said expenses of $13,017.27 constitute an allowable deduction from Petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred in the taxpayer's trade or business;

(b) In the alternative, that the Petitioner sustained during 1939 a loss in a transaction entered into for profit in the amount of $13,017.27;

(c) In the alternative, that the said expenses of $13,017.27 constitute an allowable deduction from Petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred for the production or collection of income;

(d) That the Petitioner's taxable net income for 1939 was not greater than $16,790.54; and

(e) That there is a deficiency in Petitioner's 1939 income tax of not more than $123.75.

(s) FREDERICK E. S. MORRISON,
(s) JOHN W. BODINE,
1429 Walnut Street,
Philadelphia, Penna.,
Counsel for Petitioner.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

MICHAEL F. MCDONALD, being duly sworn according to law, deposes and says that he is the within named Petitioner; that he has read the foregoing Second Amended Petition and is familiar with the statements contained therein, and that the facts stated therein are true.

(s) MICHAEL F. MCDONALD.

Sworn to and subscribed before me this 20th day of November, 1942.

(s) WINIFRED L. CURLEY,
(Seal) *Notary Public.*
My Commission expires Jan. 27, 1945.

ANSWER TO SECOND AMENDED PETITION.

(Filed December 29, 1942.)

Now comes the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the second amended petition in the above-entitled proceeding admits and denies as follows:

1. Admits the allegations of paragraph 1 of the second amended petition.

2. Admits the allegations of paragraph 2 of the second amended petition.

3. Admits that the taxes in controversy are income taxes for the taxable year 1939; denies the remaining allegations of paragraph 3 of the seconded amended petition.

4. (a) Denies the allegations of paragraph 4 (a) of the second amended petition.

5. (a) to (e) Denies the allegations of paragraphs 5 (a) to (e), inclusive, of the second amended petition.

6. Denies generally each and every allegation of the second amended petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the second amended petition be denied.

(Signed) J. P. WENCHEL,
B. F.
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

HARTFORD ALLEN,
Division Counsel.
MYRON S. WINER,
Special Attorney,
Bureau of Internal Revenue.

STIPULATION OF FACTS.

(Filed at Hearing, September 17, 1942.)

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto by their respective attorneys of record that the following statements are true, provided, however, that this stipulation is without prejudice to the rights of either party to introduce further evidence not inconsistent with the facts herein stated:

1. The petitioner is an individual residing at 6 Brown Street, Ashley, Pennsylvania. The petitioner filed his individual ncome tax return for the calendar year 1939 with the Collector of Internal Revenue for the Twelfth Collection District of Pennsylvania, on March 15, 1940. There is introduced in evidence a photostat copy of the said return. The petitioner's books were regularly kept on the cash receipts and disbursements basis and were so kept in 1939. The return aforesaid was prepared on the cash receipts and disbursements basis.

2. The petitioner paid income tax for the year 1939 to the Collector aforesaid in the amount of $1,018.02.

3. The notice of deficiency, a true copy of which is attached hereto, marked Schedule "A" and hereby made a part hereof, was mailed by registered mail to the petitioner at 6 Brown Street, Ashley, Pennsylvania, on August 9, 1941.

4. The tax in controversy is income tax for the calendar year 1939.

5. The petitioner is now, and has been for many years, a resident of Luzerne County, Pennsylvania. He was admitted to the bar of the Court of Common Pleas of Luzerne County on August 1, 1904, and subsequently was admitted to the bars of the Supreme Court of Pennsylvania and other Pennsylvania and Federal courts.

6. On December 1, 1938, the then governor of the Commonwealth of Pennsylvania appointed the petitioner to fill an unexpired term as judge of the Court of Common Pleas of the Eleventh Judicial District of Pennsylvania. The said district is coextensive with Luzerne County.

7. Petitioner accepted the appointment aforesaid and served as judge of the Court of Common Pleas of Luzerne County from December 1, 1938, until January 1, 1940, when the term of his appointment expired.

8. During the year 1939, petitioner received the sum of $12,000.00 as compensation for services as judge of said court, the sum of $20,000.00 as fees for services as executor of the Estate of Mary S. Stegmaier, and the sum of $500.12 for legal services rendered. These amounts, except for $1,000.00 of the $12,000.00 salary as judge, were reported as taxable income in the petitioner's return for 1939 aforesaid.

9. The term of office of judge of the Court of Common Pleas aforesaid, was to expire on January 1, 1940, and under the laws of the Commonwealth of Pennsylvania, this judgeship was to be filled at the General State Election on November 7, 1939.

10. On July 21, 1939, the petitioner filed a nominating petition with the Secretary of the Commonwealth of Pennsylvania to become a candidate for election for said office at the Primary and General Elections of 1939. The petitioner was opposed at both the Primary and General Elections.

11. At the Primary Election of Luzerne County held September 12, 1939, petitioner was nominated as the nominee of the Democratic Party for the office of judge aforesaid. At the General Election on November 7, 1939, the petitioner received 81,857 votes and his Republican opponent received 89,091 votes. Petitioner was accordingly defeated.

12. Under the laws of the Commonwealth of Pennsylvania, the term of said office of judge, aforesaid, was ten years from January 1, 1940, to January 1, 1950, and the annual salary payable to such elected candidate was $12,000.00.

13. On August 31, 1939, the petitioner paid out from his own funds the amount of $1,000.00 to Thomas J. Callahan, Treasurer of the Luzerne County Democratic Primary Campaign Committee, and on October 7, 1939, and October 28,

1939, petitioner paid out from his own funds the respective amounts of $4,000.00 and $3,000.00 to John Malinowski, Treasurer of the Luzerne County Democratic Committee.

14. In addition to the payments mentioned in Paragraph 13, supra, the petitioner paid out from his own funds (and from the $500.00 mentioned in Paragraph 15, infra) during 1939 the following expenses in connection with his campaign for nomination and his campaign for election to the office as judge as aforesaid:

Filing nomination petitions	$ 70.00
Printing and stationery	881.34
Telephone tolls	5.65
Rental of radio	38.40
Hire of clerks	389.71
Postage paid to U. S. Post Office	750.90
Rental of Typewriters	18.00
Advertising	2,040.02
Traveling expenses	823.25
Total	$5,017.27

Petitioner traveled on fifty-eight days in connection with his campaign for the Primary Election and on thirty-six days in connection with his campaign for the General Election.

15. During 1939 the Petitioner received the amount of $500.00 as a contribution from his son, Michael F. McDonald, Jr., for the purpose of defraying in part petitioner's expenses aforesaid in connection with his campaign for nomination and his campaign for election to the office as judge of the Common Pleas Court of Luzerne County, as aforesaid.

FREDERICK E. S. MORRISON,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

(Schedule "A" is the same as Exhibit A printed at pages 6a-9a hereof)

REPORTER'S MINUTES.

[31]* Hearing at U. S. Court House, Court Room No. 2, Philadelphia, Pa., on the 17th day of September, 1942, at 2:00 o'clock P. M.

The above-entitled matter came on for hearing on this 17th day of September, 1942, before the Honorable Samuel B. Hill, Member of the United States Board of Tax Appeals at Philadelphia, Pa., pursuant to notice of hearing heretofore given, whereupon the following proceedings were had, to-wit:

Appearances:

FREDERICK E. S. MORRISON, and JOHN W. BODINE, (1429 Walnut Street, Philadelphia, Pa.) appearing on behalf of the Petitioner.

MYRON W. WINER (Honorable J. P. WENCHEL, Chief Chief, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent.

[32] PROCEEDINGS.

THE MEMBER: Call the next case.

THE CLERK: Docket 109104, Michael F. McDonald.

THE MEMBER: Announce your appearances.

MR. MORRISON: Frederick E. S. Morrison and John W. Bodine, 1429 Walnut Street, Philadelphia, Pennsylvania, for Petitioner.

MR. WINER: Myron S. Winer, for Respondent.

THE MEMBER: Make a statement of the case for the Petitioner, please.

OPENING STATEMENT OF FREDERICK E. S. MORRISON, ATTORNEY FOR PETITIONER.

MR. MORRISON: If your Honor please, this, I think, is a very unique question. The issue is whether or not campaign expenses in connection with a primary and general

*Figures in brackets refer to page numbers of Transcript of Record.

county election are deductible as ordinary and necessary expenses incurred in taxpayer's trade or business.

The Petitioner, Michael F. McDonald, was a Judge of the Common Pleas Court of Luzerne County, Pennsylvania. That is a county located in the northeastern section of our state. He was appointed to office effective December 1, 1938 to fill an unexpired term ending January 1, 1940.

We propose to show that in accepting that appointment he agreed that he would run for office at the next general election for a ten-year term commencing January 1, 1940 and ending January 1, 1950.

[33] In connection with his primary campaign and the general election campaign in November he incurred expenses of some $13,000, part of which we will show, to the extent of $8000, represented assessments imposed by the Primary Democratic Committee and the County Democratic Committee for the election in November, and we contend that he had a right—first, we contend that his business was that of a Judge, and that to run for election to succeed himself in office such expenses incurred in connection with the election were ordinary and necessary business expenses.

We, however, are going to ask the Board to also consider, further in this case, that the House Bill, which was passed here recently, the Revenue Bill of 1942, goes a step further than heretofore in that it allows the deduction of expenses that are considered non-trade or non-business expenses where they are for the production or collection of income. That Bill proposes that it shall be retroactive as to that section for all years that are open, and we trust that the Board will not decide this case before the Revenue Act of 1942 is passed.

However, we feel, irrespective of what happens to that Bill that is now pending, quite confident that these expenses incurred by Judge McDonald are ordinary and necessary expenses and should be allowed as deductions in computing the taxable income.

[34] THE MEMBER: Statement for the Respondent.

OPENING STATEMENT OF MYRON S. WINER, ATTORNEY FOR RESPONDENT.

MR. WINER: If your Honor please, I think I should state the issue: whether the item of $13,017.27 claimed as a deduction by petitioner from gross income on his return for the year 1939 for re-election expenses was properly disallowed for the reason that such alleged expenditure does not represent an ordinary and necessary expense incurred in connection with the carrying on of a trade or business.

It is the Respondent's contention that such expenditures are not allowable as deductions from gross income as ordinary and necessary business expenses under Section 23 (a) of the Internal Revenue Code or as losses suffered during the taxable year under Section 23 (30)—rather Section 23 (e), or as bad debts ascertained to be worthless and charged off during the taxable year under Section 23 (k) or as contributions under Section 23 (o) of the Internal Revenue Code.

The Commissioner takes the position that such expenditures are personal in nature; and, hence, are not allowable deductions from gross income.

THE MEMBER: Call your witness.

MR. MORRISON: If your Honor please, in order to make the record straight, I think it is agreed that the [35] issue in this case is whether or not these expenses made by Judge McDonald in 1939 are ordinary and necessary business expenses. However, the petition doesn't clearly set that forth, and I wish leave to file an amended petition setting forth the exact grounds on which we rely.

The other ground, in addition to ordinary and necessary expenses, is that we say that if it is not allowable under Section 23 (a) then it should be allowed as a loss incurred in a transaction entered into for profit.

They are the only two grounds on which we claim the allowance should be made, except that under the proposed House Bill, which I discussed a while ago.

Your Honor requires us to file a written amended petition?

THE MEMBER: Yes.

MR. MORRISON: Very well.
May we proceed to call the witnesses?

THE MEMBER: Any objection to the amended petition?

MR. WINER: No, your Honor, except that I should file a written denial.

THE MEMBER: You will file a written denial. How long a time do you require?

MR. MORRISON: I think we can get it in by tomorrow noon.

THE MEMBER: Very well. Have it in by tomorrow [36] noon.
Is that amended petition or amendment to the petition?

MR. MORRISON: I can make it amendments to the petition.

THE MEMBER: Whichever you wish.

MR. MORRISON: I will make it amendments to the petition.

THE MEMBER: All right. It may be filed.

MR. MORRISON: I wish to offer in evidence stipula facts agreed upon by counsel for the Respondent a Petitioner, and I would like to have each of the copies stamped.

MR. WINER: If I may suggest, your Honor, I think it might be helpful to you if you have that stipulation before you during the progress of this case.

THE MEMBER: All right.

MR. MORRISON: Judge McDonald, will you take the stand, please.

Whereupon MICHAEL F. McDONALD was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

[37] By MR. MORRISON:

Q. Judge McDonald, what is your occupation?

A. Attorney at law.

Q. And what was your occupation in 1939, throughout that year?

A. In 1939 I was Judge of the Court of Common Pleas of the 11th Judicial District of the Commonwealth of Pennsylvania, comprising the County of Luzerne.

Q. We have stipulated, Judge McDonald, that you were appointed Common Pleas Judge by Governor Earle in 1938. Was there any condition attached to that appointment?

A. Yes, there was.

Q. Will you please state what that was?

MR. WINER: I object, your Honor.

THE MEMBER: Let me make this statement. I want to say that I agree with the statement of counsel for the Petitioner that this is a unique case. I am very seriously in doubt about the materiality of this testimony, but I will reserve that question.

MR. MORRISON: May I ask your Honor on what basis you don't think it is material? I think it is very material in this case.

THE MEMBER: I am admitting it. I am overruling the objection and admitting it, with reservations as to materiality. I will take that under consideration when I [38] take the case up.

MR. WINER: Your Honor, doesn't this answer involve, perhaps, a hearsay item?

THE MEMBER: What is that?

MR. WINER: Might not the answer involve a hearsay item as to what Governor Earle told him.

MR. MORRISON: I didn't say anything about what Governor Earle told him.

MR. WINER: Will you please read the question?

(The question was read.)

A. The condition was this: that I would agree to be a candidate for the full term in November, 1939.

MR. WINER: I object, your Honor, and move it be stricken from the record.

THE MEMBER: The objection is overruled, with the reservation that I made in the previous ruling.

MR. WINER: Will you note my exception, your Honor?

THE MEMBER: The exception is noted.

Q. You were a candidate to succeed yourself in the general election of 1939?

A. I was.

MR. WINER: I object, your Honor.

THE MEMBER: Overruled.

Q. What did you have to do in order to get the support [39] of the Democratic Party?

A. I was obliged to contribute the assessment of the Democratic organization of Luzerne County made by its Executive Committee.

MR. WINER: I object, your Honor.

THE MEMBER: I understand that counsel for the Respondent is objecting to this entire line of testimony.

MR. WINER: Yes, your Honor.

THE MEMBER: I will overrule the objection and admit the evidence offered. I will pass on the question of

materiality when I come to write up the case and make my decision.

Q. Were you consulted as to the amount of assessment?

A. I was not. The amount of the assessment was communicated to me later on.

MR. WINER: If I may—excuse me just a minute, your Honor. I not only object on the ground of materiality, but object on the ground that the witness is stating a conclusion.

THE MEMBER: I don't think that objection is good. It may be understood that your objection goes to this entire line of testimony. If the ruling is adverse to you, you may have an exception.

MR. WINER: Thank you, your Honor.

Q. Did you have any control over fixing the amount [40] of that assessment?

A. I did not. It was "take it or leave it."

Q. Would you have had the support of the Democratic organization if you had not agreed to that assessment?

A. I certainly would not.

Q. It is stipulated that you traveled on 94 days in 1939 in connection with your campaign for re-election. During which months of the year was that done?

A. It was done principally in the months of July, August, September and October.

MR. WINER: I object, your Honor. I think that the witness has written evidence to show the dates on which these trips were made, and I object on the grounds of best evidence.

THE MEMBER: Did he make that memorandum you are referring to?

MR. WINER: Yes, your Honor.

THE MEMBER: I will overrule it.

Q. Are the Common Pleas Court of Luzerne County, including the one over which you presided, adjourned during those months?

A. There is only one Common Pleas Court in Luzerne County. There are five individual Common Pleas Judges. In 1939, the adjournment began around June 15th and continued practically to the first Monday in October, when the Common [41] Pleas begins again. There may be some Chamber sessions, motions and so on, during the summer months, and one Judge is assigned for several weeks.

Q. But you attended to all your Judicial duties?

A. I did.

Q. When you were required to?

A. I did.

Q. Judge McDonald, in the primary and general election of 1939, was there also an election for another Judgeship in the Common Pleas Court of Luzerne County?

A. Yes. In that campaign, the County of Luzerne was to elect two Common Pleas Judges.

Q. What is that?

A. Mine was for an unexpired term of Judge McLean, who had died in the summer of 1939, and Judge Valentine, who had been on the bench for ten years, his term expired; so that there were two vacancies to be filled that year.

Q. For the term beginning January 1, 1940 for ten years?

A. That is correct.

Q. Did you practice law at all during the year 1939?

A. I did not.

Q. As an attorney?

A. I did not.

Q. It is stipulated that you were, during 1939, an executor of the Estate of Mary Stegmaier. When did you [42] become executor of her Estate?

A. I became one of the executors of her Estate, there being two others, namely, her son, George J. Stegmaier, and George W. Guckelberger, on the 8th of December, 1936.

Q. Is this a short certificate from the Register of Wills of Luzerne County?

A. Yes, sir. The will was probated on that date and letters testamentary were issued to us at that time.

MR. MORRISON: If your Honor please, I offer in evidence a short certificate issued on the 8th day of December, 1936 by the Register of Wills of Luzerne County showing the appointment of George J. Stegmaier, George W. Guckelberger and M. F. McDonald, the Petitioner, as executors of the Estate of Mary G. Stegmaier, deceased.

THE MEMBER: What is the relevancy of that?

MR. MORRISON: I want to show—rather, I will put it this way: The reason for producing that is the fact that when we tried to stipulate the facts of this case, Respondent's counsel seemed to take the position that the Petitioner was conducting other businesses besides that of Judgeship during the year 1939, and I want to show that he was executor back in 1936 and has continued to be ever since.

THE MEMBER: Is that admitted here?

MR. WINER: If your Honor please, I think in our [43] stipulation we have admitted that he received a fee of $20,000 in 1939 in paragraph 8 for services as executor of the Estate of Mary G. Stegmaier.

MR. MORRISON: I want to show that they were for services rendered for the entire executorship period.

MR. WINER: What do you mean by that?

MR. MORRISON: Just that; from the date he was appointed. It is stipulated that he is one of the three executors of the Estate of Mary Stegmaier. I want to show the date he was appointed as executor.

THE MEMBER: He testified to it, I believe. You can have it in, if you want it.

MR. MORRISON: I would like to have it in.

MR. WINER: I have no objection.

THE MEMBER: Admitted as Petitioner's Exhibit 1.

(Document referred to marked Petitioner's Exhibit No. 1 and received in evidence.)

Q. Judge McDonald, how much time did you spend in 1939 in the performance of your duties as Executor of the Estate of Mary Stegmaier?

A. Very little time. Only, Mr. Morrison, the time that would be consumed in conferences; I think three conferences, I find from my diary, with my fellow executors, and the time that might be consumed in signing the checks for the payment of bills that were incurred that year.

[44] Q. Were not most of the duties performed by you prior to 1939?

A. That is correct.

Q. In fact, prior to December 31, 1938?

A. That is correct.

MR. WINER: I object, your Honor. The bill itself would be the best evidence.

THE MEMBER: What is that?

MR. WINER: The vouchers filed in the Orphans' Court showing the allowance of these fees, I think, would be the best evidence or proof of that, your Honor.

MR. MORRISON: If your Honor please, I wish to take exception to that because, apparently, the advisor to the Respondent's Counsel doesn't seem to know what we do in ou. Orphans' Court. We have no such thing as vouchers. They are simply entered on the account.

THE MEMBER: I overrule the objection. Your question is leading, though. Let the witness do the testifying, and you do the questioning in the way the rules provide.

MR. MORRISON: Very well.

Q. To the best of your knowledge, Judge McDonald, have any other Judges of your Common Pleas Court ever acted as executor of an Estate?

A. They have.

[45] MR. WINER: I object, your Honor.

THE MEMBER: That is immaterial. I will sustain the objection and strike the answer.

MR. MORRISON: I would like to have an exception, if you please.

THE MEMBER: You may have an exception.

Q. Were you also counsel for the Stegmaier Estate?

A. I was.

Q. Did you perform any duties as attorney in the year 1939?

A. I did not.

THE MEMBER: Judge, what Court has jurisdiction of probate matters?

A. In Luzerne County, there is a special Orphans' Court, if your Honor pleases.

THE MEMBER: Does the Common Pleas Court have any jurisdiction?

A. None whatever. We have a separate Orphans' Court of Luzerne County, presided over by one President Judge.

THE MEMBER: What is the appellate court for that?

A. The Superior and Supreme Courts of Pennsylvania, depending upon the size of the judgment.

Q. Judge, do you recall following any other occupation or business or profession during the year 1939?

A. I certainly did not.

[46] Q. Other than that of Judge?

A. That is correct.

Q. It is stipulated that you spent $5017.27 in 1939 for miscellaneous expenses, radio advertising, postage, and so on in connection with your campaign to retain your office. Did you file sworn accounts of these statements within 30 days after the primary and general elections with the County Board of Elections?

A. I did.

MR. WINER: I object, your Honor. I think that those speak for themselves, too.

MR. MORRISON: No, no.

THE MEMBER: What is that?

MR. WINER: I think that those records or statements would speak for themselves.

MR. MORRISON: I asked him if he filed them. That is all I asked.

THE MEMBER: He asked him something, I take it, not in the stipulation.

Q. Judge McDonald, what is the size of Luzerne County?

A. In area, approximately about 50 miles in length north and south, and about 30 miles in width east and west. In population, it is about 450,000, and in the number of registered voters, I think about 210,000.

Q. What is the nature of that population?

[47] A. It is a very cosmopolitan population made up of every nationality under the sun.

Q. That's the principal anthracite coal section?

A. We are exactly in the center of the anthracite coal fields, coal beds.

Q. That's its principal industry?

A. That's the principal industry.

MR. WINER: I object, your Honor. He seems to be leading the witness along. I wish he would be more direct in his questions.

THE MEMBER: I don't know that I can control that.

MR. MORRISON: That is all.

MR. WINER: I offer in evidence, your Honor, the individual income tax return of the Petitioner for the calendar year 1939 as Respondent's Exhibit A. That is the year involved herein.

THE MEMBER: Is it identified?

MR. MORRISON: Is it admitted?

MR. WINER: Yes.

THE MEMBER: Admitted as Respondent's Exhibit A.

MR. WINER: With permission to substitute a photostatic copy?

THE MEMBER: You may have that permission.

(Document referred to marked Respondent's Exhibit A and received in evidence.)

[48] MR. WINER: No questions, your Honor.

THE MEMBER: That is all, Judge.

MR. MORRISON: Judge McDonald, just a second. I would like——

MR. WINER: I object, your Honor. I have not cross-examined the witness.

THE MEMBER: If he has any re-direct——

MR. WINER: He has no re-direct, your Honor.

MR. MORRISON: I do have, your Honor.

If your Honor please, this is in effect an equity proceeding, and there are just a couple of questions I would like to ask the witness, and I think I am entitled to ask them.

MR. WINER: I object, your Honor.

THE MEMBER: If he wants to open it up——

MR. MORRISON: I will recall him.

THE MEMBER: We are not going to stick to technicalities on that.

MR. WINER: Will you note my exception?

THE MEMBER: Yes.

By MR. MORRISON:

Q. We have agreed that this case involves a very important question of law that affects the whole nation.

THE MEMBER: Go ahead and ask your question.

MR. MORRISON: I would like your Honor to hear me a [49] minute.

This question, since the passage of the Public Salaries Act of 1939, is very important to the nation, with the high tax rates that are now in effect, and will be in effect much higher this coming year.

THE MEMBER: Have you any questions to ask this witness? Don't take this down. We are not going to have any argument at this stage of the game. If you have some questions to ask, direct them to the witness.

MR. MORRISON: All right.

Q. Judge McDonald, on your return for 1939, under Schedule D, Item 1, it reads as follows: "Total receipts (state nature of business or profession): Judge and attorney, $11,500.12." Will you state for the Board the nature of that item of $11,500.12?

MR. WINER: I object. That is covered by the stipulation.

THE MEMBER: Is it covered by the stipulation?

MR. MORRISON: It may be, your Honor.

THE MEMBER: Well, objection is sustained.

MR. MORRISON: If it is, then I will withdraw the question.

MR. WINER: Isn't that covered?

MR. MORRISON: That part is. You are right.

Q. Judge McDonald, it is stipulated that in the year [50] 1939 you received $500.12 as attorney. When were those services performed?

A. Those services were all performed prior to December 1, 1938, the date of my appointment.

Q. When you put down on the return "judge and attorney" the idea was merely for explanation of the item, or what was its purpose?

A. As Judge I had an income that year of $11,000, though it might have been twelve, because the last check was not cashed until after the beginning of the next fiscal year, and the $500.16 was income that came to me as an attorney, but earned prior to December 1, 1938.

Q. Is that the reason why, on page 4 of the return, under the caption "questions," you state: "Item 1: State your principal occupation or profession," and you wrote "Judge and attorney"?

A. Well, I don't recollect that, but my principal occupation certainly in 1939 was a Judge, because a Judge is prohibited by statute from acting in any way as an attorney.

Q. Therefore, you did not act as an attorney in that year?

A. I certainly did not.

MR. MORRISON: That is all.

MR. WINER: If your Honor please, I would like to [51] state at this time that we have objected, as I understand it, to every bit of evidence, questions and answers, put in.

THE MEMBER: All right. Let the record show that your objection goes to all the testimony of this witness.

MR. WINER: Yes, your Honor.

THE MEMBER: And that you may have an exception to the ruling admitting any of it?

MR. WINER: Thank you.

MR. MORRISON: That is all, Judge McDonald.

THE MEMBER: That is all.

(Witness excused.)

MR. MORRISON: Mr. James Law!

Whereupon JAMES J. LAW was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. What is your occupation, Mr. Law?

A. Special representative of the Sinclair Refining Company.

Q. What was your occupation in 1939?

A. Special representative of the Sinclair Refining [52] Company.

Q. In that year, did you have any connection with any political organization?

A. Yes, sir.

Q. What was it?

A. Chairman of the Democratic County Committee of Luzerne County.

MR. WINER: I object, your Honor. I don't see the materiality of this.

THE MEMBER: The objection will be overruled, with reservation to the materiality.

MR. WINER: May that cover the entire testimony?

THE MEMBER: That will cover the entire testimony along that line.

Q. Have you been Chairman continuously since 1939?
A. Yes, sir.
Q. I am sorry. When did you become Chairman of the Democratic County Committee?
A. June of 1936.
Q. You have been that since?
A. I have been re-elected.
Q. Did any of the candidates for offices in Luzerne County receive the support of your Democratic organization in the primary and general election of 1939?
A. Yes, sir.

[53] MR. WINER: I object, your Honor.

THE MEMBER: It is understood you may have an objection to all of this testimony. I imagine you are going to object to all of it.

MR. WINER: Except that he does appear to be leading the witness along.

MR. MORRISON: I am not leading the witness along. I am trying to get it over with. That is just nonsense.

Q. How many candidates were supported by your Committee?
A. Eleven.
Q. Do you know the names of those candidates?
A. Offhand, I couldn't tell you all of them. Judge McDonald was at the head of the ticket. Attorney John Bonin.
Q. What was John Bonin running for?
A. He was running for Judge.

THE MEMBER: Let's not bring in any other candidate. Let's confine it to this one candidate.

MR. MORRISON: It is very important to bring in the other candidates, because the Respondent takes the position that Judge McDonald's contribution or assessment to the Primary Democratic Committee and to the General Democratic Committee were for the benefit of all candidates, and I propose to show that the other candidates contributed [54] to that same Committee for the benefit of Judge McDonald; so it is very material.

THE MEMBER: All right. All right.

MR. WINER: Same objection, your Honor.

THE MEMBER: The objection will be overruled, with the reservation laid down.

Q. Do you recall why two candidates were running for the office of Judge of the Common Pleas Court of Luzerne County?

A. There was a vacancy due to the death of Judge McLean, and the other term expired of Judge Valentine. That is the reason there were two candidates running.

Q. Can you tell us how your Committee is organized?

A. Yes, sir.

Q. Will you do that, please?

A. There are 408 precincts in the County of Luzerne, and according to the State rules of the Democratic Party, we elect two members from each precinct to the Committee, a man and a woman, and then the Committee convenes after the primaries, 60 days after the primary election, and they elect their County officers, County Chairman, County Treasurer, Secretary and Vice-Chairman. Then, there are seven legislative districts in the County of Luzerne. Each legislative district holds a convention, and they elect a chairman of the district, and the County Chairman has the power, [55] through the rules, to appoint an executive committee of 21 members. Each member in his—each chairman of the legislative district is a member of the committee, and he

appoints two members from his district which comprise 21 members, and the County Chairman is also a member of the Committee.

Q. Do you have a sub-committee, also, a sub-executive committee?

A. The Chairman has the power to appoint committees. He appoints sub-committees when it is necessary.

Q. How did your organization support these candidates by setting up these committees?

A. The County Executive Commitee met.

Q. How were the expenses of the Committee met?

A. How were the expenses?

Q. Yes.

A. Through assessments of the candidates that were running for office.

Q. Do you know how the assessments were determined?

A. They were determined according to the means and the salaries that they would receive if they were elected.

MR. WINER: I object, your Honor. I object to the use of the word "assessment" unless the Petitioner can show that these were legal obligations on the part of Mr. McDonald, and any other candidate, to pay those amounts and on [56] the Party to spend them.

MR. MORRISON: I don't agree.

THE MEMBER: I am taking this evidence, reserving all questions as to materiality. I overrule the objection.

MR. WINER: There are questions not only as to materiality but conclusions.

THE MEMBER: Yes.

MR. WINER: And legal conclusions as well, your Honor.

THE MEMBER: All right. I will reserve that question, too.

MR. WINER: Thank you, your Honor.

THE MEMBER: I will overrule your objection. Go ahead.

Q. Did your Committee consult with the candidates as to the amount that they would be assessed for the campaign expenses?

A. Pardon.

Q. Did your Committee consult with the candidates as to the amounts that they would be assessed for campaign expenses?

A. There was a sub-committee picked to consult with them.

Q. If any of the candidates had not paid his entire assessment, would he have had the support of your [57] organization?

A. Would he?

Q. Yes.

A. I don't think so.

Q. Well, would he? Answer the question.

A. No.

Q. Were the receipts of the committees disbursed under your direction?

A. No, sir. They were disbursed under the direction of the Treasurer.

THE MEMBER: The Treasurer of what?

A. Of the County Committee.

Q. Do you know whether the funds ——

THE MEMBER: Do you mean he determined how it should be disbursed?

A. Pardon me.

THE MEMBER: Do you mean he determined how it should be disbursed?

A. No. The Executive Committee——

THE MEMBER: He simply paid them out?

A. He paid them out.

THE MEMBER: Somebody authorized him to do it; isn't that correct?

A. That is right.

Q. Do you know whether the funds of those committees, [58] those two committees, were paid for the types of expenses which are permitted by the Election Code of Pennsylvania?

A. Yes.

MR. WINER: I object, your Honor. I think that that is a conclusion.

THE MEMBER: That is a conclusion.

MR. MORRISON: Your Honor, I have asked him whether the—first of all, the Election Code specifies the nature of these expenses that moneys may be expended for, and I have asked him: did the expenses of those committees conform to what is prescribed?

THE MEMBER: It is a conclusion, though. I will strike the answer.

Q. Did the assessments paid into your Committee, into the two committees, by the nine candidates other than Judge McDonald help his candidacy?

A. Yes, sir.

THE MEMBER: Wait a minute. Wait a minute.

MR. WINER: I object, your Honor.

THE MEMBER: Are you testifying to a fact or your opinion?

A. My own opinion.

MR. WINER: I object on the grounds

THE MEMBER: The objection is sustained.

Q. Mr. Law, do you know whether or not Judge McDonald [59] was helped in his campaign by the funds received by the two committees?

A. In my opinion; yes.

THE MEMBER: Just a minute.

MR. WINER: I object.

Q. I am asking you whether you know it as a fact?
A. In my opinion; yes.

THE MEMBER: The answer is stricken.

Q. Not as to your opinion; do you know for a fact whether the receipts by the two committees benefited Judge McDonald's candidacy in conducting the expenses of that campaign?

A. Yes.

MR. WINER: I object.

MR. MORRISON: He said he knew it as a fact.

THE MEMBER: I think the witness has already stated that he is giving simply an opinion. It will be considered as an opinion when we come to consider this, and the competency of it is certainly not——

MR. MORRISON: I will proceed to qualify him, then.

Q. Mr. Law, did you ever run for elective office?
A. Yes, sir.
Q. Did you——

MR. WINER: I didn't hear that question.

THE MEMBER: This is not a matter for expert [50] testimony.

MR. MORRISON: I think it may be, your Honor.

THE MEMBER: I think it isn't. Any objection?

MR. WINER: Yes, your Honor.

THE MEMBER: Objection sustained.

Get your record in here. I am letting you put in a lot of stuff that has nothing to do with this case. I am letting you put it in. You can't move in everything.

MR. MORRISON: I know. If you will bear with me, you will see that it is very relevant.

THE MEMBER: I won't let it in. You go ahead and ask your questions. We have to draw the line somewhere.

MR. MORRISON: Very well, sir.

Q. Mr. Law, in how many campaigns, political campaigns have you participated in Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained.

MR. MORRISON: Your Honor, I am qualifying this man as an expert witness.

THE MEMBER: I am holding that it is not a matter for expert testimony.

MR. MORRISON: You don't know what I am going to prove by it.

THE MEMBER: I know you are not going to prove it before this forum.

[61] MR. MORRISON: What I want to do is make an offer of proof, that these are necessary and ordinary expenses in connection with his political campaign. I want to show from these witnesses, experts, that they were ordinary and necessary election campaign expenses.

MR. WINER: I object to the introduction of that.

THE MEMBER: Then, show that. You don't have to show it by expert testimony.

MR. MORRISON: I started to. You granted all these objections here, right and left.

THE MEMBER: All right. Ask your questions, and I will rule on them as you ask them.

Q. How many political campaigns have you participated in in Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained. It is immaterial.

Q. Did you ever run for office?

MR. WINER: I object, your Honor.

THE MEMBER: Objection sustained.

Q. Do you know what the expenses of the various candidates have been in these various campaigns?

A. Yes.

MR. WINER: I object to that question, too.

THE MEMBER: Objection sustained. The answer is stricken.

[62] Q. Mr. Law, what has been your experience in political campaigns?

MR. WINER: I object.

THE MEMBER: Objection sustained.

MR. MORRISON: I would like to know the ground for it, your Honor.

THE MEMBER: The ground is so obvious that it is difficult to explain it.

MR. MORRISON: It can't be very obvious if it can't be explained.

THE MEMBER: Of course, I am not responsible for your understanding it. It is obvious to me. Go ahead and ask your question.

Q. Mr. Law, you have testified that you have been County Chairman for many years of the Democratic Party of Luzerne County?

MR. WINER: I object.

MR. MORRISON: I am telling him what he has already testified to.

Q. During 1939, Judge McDonald expended—and this is stipulated—for campaign expenses, out of his own funds, $5017.27, and in addition thereto he was assessed by the Committee a total of $8000, which he paid over to the committees.

MR. WINER: I object to the form of the question, [63] your Honor.

MR. MORRISON: There is no question yet.

THE MEMBER: He is reading from the stipulation.

MR. WINER: There is nothing in the stipulation which shows that this was an assessment—nothing,—not a thing.

MR. MORRISON: With that qualification, that there is not in the stipulation any word of "assessment," they were amounts paid to the committees—we had testimony already that they were assessments.

THE MEMBER: There is no question about that, that they were paid in.

MR. MORRISON: There has been testimony, and not contradicted, that they were assessments.

MR. WINER: We have objected to all testimony that has gone in.

MR. MORRISON: That's all right. But, it has been admitted.

MR. WINER: It has been admitted with reservations as to it.

Q. Mr. Law, from your long experience in political campaigns as County Chairman of the Democratic Party

of Luzerne County, would you say that the total expenditures by Judge McDonald in 1939, that is, the $13,017.27, were or were not ordinary in amount and necessary for his [64] candidacy as Judge of the Common Pleas Court of Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained.

Q. Would you say, Mr. Law, that it was necessary for Judge McDonald to make those disbursements as campaign expenses in order to retain his office as Judge?

A. Yes.

MR. WINER: I object.

THE MEMBER: Objection sustained. Don't answer the question until you see whether there is an objection or not.

MR. MORRISON: Your Honor, I would like the record to show that I have made an offer of proof to show that by this witness, Mr. Law here, that the disbursements made by Judge McDonald in 1939 in connection with his election campaign, both at the primary and the general election, were ordinary, necessary expenses by him in connection with seeking the re-election for a term of ten years commencing January 1, 1940 and ending December 31, 1949.

THE MEMBER: Your offer of proof the method of proof by which you propose to make this showing is indicated by the questions asked and the rulings thereon?

MR. MORRISON: Yes.

THE MEMBER: The offer is denied.

MR. WINER: No questions, your Honor.

[65] THE MEMBER: I don't know whether he is through with the witness or not.

MR. WINER: I am sorry.

MR. MORRISON: If Your Honor please, I am making an offer of proof by this witness showing that he has been Chairman of the Democratic Committee of Luzerne County, Pennsylvania for many, many years past; that he is competent to testify as to what constitutes ordinary and necessary expenses in an election campaign by a candidate; that he is the County Chairman; that he has run for office at various times; that he is familiar with the expenses of his Committee, what the moneys are paid for; that he is familiar with the fact that under the law of Pennsylvania we have an Election Code which governs what a committee and the candidate may spend moneys for; that he knows that the Committee has filed statements as prescribed by the law of the Commonwealth showing the nature of the receipts and the disbursements by those committees, and that they conform to what is prescribed by the Election Code, and that is what I endeavored to show by this witness, that the expenditures made by Judge McDonald in connection with his two campaigns, the primary campaign in the early part of the year 1939, and the general election in November of 1939; that those expenses were ordinary and necessary expenditures by Judge McDonald in seeking re-election for his term of office as Judge.

[66] THE MEMBER: I am not taking the position that he couldn't show that he is qualified to answer the questions; that the expenditures made by Judge McDonald were necessary expenses in Judge McDonald's campaign, if he were qualified to show it, but on the basis of the questions which you have propounded to this witness, and assuming that your offer of proof will be along the same line, I will deny your offer.

MR. MORRISON: I want an exception to that ruling.

THE MEMBER: You may have an exception.

Q. Mr. Law, if has been stipulated in paragraph 14 of the stipulation that Judge McDonald expended $5,017.27 for certain items, possibly 10, (I will show them to you in a minute) and in paragraph 13 that he paid out also from his own funds $1000 to the Treasurer of Luzerne Democratic Primary Committee and $7000 to the Treasurer of the Luzerne County Democratic Committee to help defray his election expenses. From your long experience in politics for the Democratic Party in Luzerne County, would you say —wait a minute. Just hold that. Will you please look at this. (Showing stipulation to witness.) Would you say that they were ordinary and necessary expenses incurred by Judge McDonald?

A. Yes.

Q. In connection with his election campaign?

[67] Mr. Winer: I object.

The Member: Objection sustained.

Mr. Winer: May the answer be stricken?

The Member: Yes.

Mr. Morrison: Exception.

You granted me an exception to that?

The Member: I will grant you an exception.

Mr. Morrison: I asked for it.

Cross-examine.

Mr. Winer: No questions.

The Member: That is all.

(Witness excused.)

Mr. Morrison: Mr. Callahan.

Whereupon THOMAS J. CALLAHAN was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. What is your occupation, Mr. Callahan?

A. Chief Clerk of the House of Representatives of Pennsylvania.

Q. What was your occupation in 1939?

MR. WINER: I object, your Honor,

[68] THE MEMBER: You object on the ground of materiality?

MR. WINER: All the way through.

THE MEMBER: I will reserve the question of materiality and overrule your objection.

A. Real estate and insurance.

Q. Will you speak louder, please?

A. Yes, real estate and insurance.

Q. Did you in 1939 have any connection with the Democratic Organization in Luzerne County?

A. I did.

Q. What was your position?

A. I was Treasurer of the Primary Campaign Committee.

Q. Were you elected or appointed?

A. I was appointed.

Q. How long have you been a member of the Democratic Organization of Luzerne County?

A. Since 1932.

Q. Did you ever run for elective office in Luzerne County?

A. Yes.

MR. WINER: I object, your Honor.

THE MEMBER: I understand you are objecting to this entire line of testimony.

MR. WINER: Yes, your Honor.

[69] THE MEMBER: It may be so understood. You may have an exception.

MR. WINER: All right.

Q. Will you state what your duties were as Treasurer of the Democratic Primary Campaign Committee of Luzerne County?

A. To accept the funds from the different candidates and any other contributions that might come in and disburse them under orders of the candidates, written orders.

Q. You had written orders from the candidates?

A. Yes.

Q. As to the expenditure of the funds?

A. Yes.

Q. In their behalf?

A. Yes.

Q. For the primary campaign?

A. For the primary campaign.

Q. Was all the money received by the Committee paid over to you as Treasurer?

A. Yes.

Q. And did you disburse that money as Treasurer?

A. All but $1199.15, which I turned over to the Treasurer succeeding me in the Fall campaign.

Q. Did you keep any books or other records of your receipts and disbursements as Treasurer?

[70] A. None other than the bank checks, the cancelled bank checks, and the statements from the bank, and receipts which I attached to my statement or accounting to the Court.

Q. Did you file an account of your receipts and disbursements?

A. I did.

Q. With the proper legal authorities?

A. Yes.

Q. I hand you a statement of receipts, expenditures or disbursements. Do you recognize your signature there?

A. I do.

Q. That was executed by you on the 11th day of October, 1939?

A. Yes, sir.

Q. With whom did you file that, do you recall?

A. The County Commissioners of Luzerne County.

Q. You are familiar with the fact that this statement shows that you received ten contributions or ten assessments or ten amounts from candidates or from certain named people, aggregating a total of $5600?

A. I am.

Q. Were they all candidates for various offices in Luzerne County?

A. They were.

MR. MORRISON: If your Honor please, I would like [71] for the record that the reporter copy in the names and the amounts of these sums received by Mr. Callahan as Treasurer after I have offered this in evidence. I think it would be easier to follow it. It has attached a lot of vouchers which I don't think are material.

MR. WISER: If this goes in, it all ought to go in for what it is worth.

THE MEMBER: What is it?

MR. MORRISON: Under our election law, the committees, the political campaign committees must file a statement of all receipts and all disbursements, showing what happened to the funds that they received and the expenditures must be in accordance with those provisions of the Election Code.

THE MEMBER: You may offer it. I will admit it as Petitioner's Exhibit 2. Call attention to the par-

ticular part you want stressed. It doesn't need to go into the record.

THE CLERK: This has been admitted?

THE MEMBER: Yes.

(Document referred to marked Petitioner's Exhibit No. 2 and received in evidence.)

THE MEMBER: Is it paged?

MR. MORRISON: Yes, it is paged.

I would like leave to withdraw that and substitute [72] a photostatic copy.

THE MEMBER: You may have that privilege.

Q. Mr. Callahan, what do these amounts represent under the caption "Receipts"?

A. The amounts of money received from the various candidates.

Q. Under "Expenditures" or "Disbursements" as it is captioned here, what do those amounts represent?

MR. WINER: I object, your Honor. I think the document speaks for itself.

THE MEMBER: I will let him answer it.

MR. MORRISON: It does——

THE MEMBER: He knows what they represent.

A. The amounts disbursed in the campaign.

Q. Were you or were you not authorized by the ten candidates who are listed on the first page authorized to make those disbursements on their behalf?

MR. WINER: I object.

THE MEMBER: Just a minute. Did you have the written authority from them?

A. Yes.

THE MEMBER: Do you have it here?

A. I don't have it here; no.

THE MEMBER: In effect, what did it provide?

A. It provided that I was to spend this money in the [73] payment of certain of those bills incurred in the primary campaign, such as advertisements, publicity on the radio. In some instances, poll men.

THE MEMBER: That was expenses incurred for the entire Democratic campaign or for the campaign for the entire list of Democratic candidates?

A. The entire list of candidates.

THE MEMBER: Not just each candidate?

A. No. Well, each item—each candidate gave me a written authority to spend the amount of money that he had given me.

THE MEMBER: I understand that he gave you authority to spend the money?

A. Yes.

THE MEMBER: So far as he was concerned; but he didn't furnish you a list of his own individual items of expense?

A. He did not.

THE MEMBER: For which to make the expenditures?

A. He did not.

MR. MORRISON: I just want to clear that up, your Honor.

Q. Mr. Callahan, the amounts that you paid out as Treasurer were amounts that were incurred by the—of expenses incurred by the Committee as such working for Judge [74] McDonald and the candidacy of the other gentlemen?

A. Yes.

MR. WINER: I object, your Honor. The question is very leading.

THE MEMBER: What is your objection?

MR. WINER: He is leading the witness right along.

MR. MORRISON: Because of the fact that his Honor saw fit to get the witness twisted up on this thing. He thought he was paying Judge McDonald's expenses out of his own pocket.

Q. Did the amounts you received from the 9 candidates other than Judge McDonald help his candidacy?

THE MEMBER: Wait a minute.

MR. WINER: I object.

THE MEMBER: Wait a minute. That is calling for an opinion.

Q. Was the money used for the mutual benefit of all the candidates?

MR. WINER: I object, your Honor.

THE MEMBER: You tell us what the money was used for, and we will draw the conclusions.

Q. Mr. Callahan, the moneys were expended by you as Treasurer of the Primary Campaign Committee solely for the——

THE MEMBER: Don't ask leading questions.

MR. MORRISON: Very well, your Honor.

[75] MEMBER: He knows what you are talking about.

Q. Mr. Callahan, were any of these gentlemen candidates for office in the primary election?

A. All of those gentlemen were.

Q. For various vacancies in office?

A. Yes.

Q. Other than the two Judgeships?

A. Yes.

Q. Judge McDonald and John H. Bonin—were they the candidates for the two Judgeships?

A. Yes.

Q. Were these moneys expended for their benefit?

THE MEMBER: Wait a minute. Wait a minute.

MR. WINER: I object, your Honor.

THE MEMBER: You can show what the moneys were expended for.

MR. MORRISON: I have done that.

THE MEMBER: We will draw the conclusions. So, don't be trying to invade that territory. That is ours.

Q. Mr. Callahan, these disbursements were made by you as Treasurer of the Campaign Committee for certain expenses incurred by your Committee in connection with the primary election, at which these ten candidates were up for election to office, for nomination to office?

A. Yes.

[76] MR. MORRISON: Cross-examine.

MR. WINER: No questions, your Honor, except that I would like to renew my objection to all of the testimony.

THE MEMBER: You may have an exception. I will overrule your objection and reserve the question of materiality of this testmony, this entire line of testimony.

MR. WINER: Thank you, your Honor.

THE MEMBER: That is all, Mr. Law.

(Witness excused.)

MR. MORRISON: Mr. Malinowski.

Whereupon JOHN MALINOWSKI was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. Mr. Malinowski, what is your occupation?

A. I am president of the Miners National Bank of Nanticoke.

Q. Of where?

A. Nanticoke, Pennsylvania.

Q. Is that in Luzerne County?

A. That is right.

Q. Is that where you live?

[77] A. No. I live in Hanover Township.

Q. In Luzerne County?

A. That is right.

Q. What was your occupation in 1939?

A. President of the Miners National Bank of Nanticoke.

Q. Did you have any connection with the Democratic Organization in Luzerne County in 1939?

A. I did.

Q. Did you hold any office with that Committee?

A. I was the County Treasurer.

Q. You were County Treasurer of what?

A. Of the Luzerne County Democratic Committee.

Q. Were you elected or appointed by the Committee?

A. I was elected.

Q. How long had you been a member of that Democratic organization in Luzerne County?

MR. WINER: I object, your Honor; also on the same grounds as the prior witnesses.

THE MEMBER: Yes. Your objection will be overruled, with reservation as to materiality of the questions. You will be allowed an exception. It is under-

stood your objection runs to this entire line of testimony.

Q. Have you ever run for elective office in Luzerne County?

A. I have.

[78] Q. What was that?

A. I ran for the office of National Delegate to the Chicago Convention in 1932.

Q. Were you successful in that campaign?

A. I was elected as a Roosevelt candidate.

MR. WINER: I object.

Q. Did you vote for Mr. Roosevelt on the first ticket?

A. On the first ballot.

THE MEMBER: Strike that out.

Q. Were you thoroughly familiar, as Treasurer, with all the receipts and disbursements of your Committee?

A. I was.

Q. Did you receive as Treasurer the moneys from the various members of the Committee; that is, did the Committee's funds come into your hands as Treasurer?

A. They did.

Q. Did you as Treasurer disburse the moneys of your Committee?

A. I did.

Q. Did you keep any books or records of your receipts and disbursements as Treasurer of that Committee?

A. I had a daily slip of the receipts; check book, bank book and duplicate deposit books.

Q. Did you ever file with the lawful authorities of Pennsylvania a statement of receipts and disbursements?

[79] A. I did.

Q. You are required to do that by the Laws of the Commonwealth?

MR. WINER: I object, your Honor.

A. Yes.

Q. I show you here a statement. Do you recognize that as a statement of receipts and disbursements of your 1939 election campaign of the Democratic Party?

A. I do.

Q. Is that your signature there?

A. It is.

Q. This statement you filed with the proper authorities, did you not?

A. With the Bureau of Elections for Luzerne County.

Q. Bureau of Elections?

A. Yes.

Q. Mr. Malinowski, I want to show you this list of receipts and disbursements attached to your filed statement. It is quite large. Can you tell from that list who were the candidates in Luzerne County for the various vacancies that occurred at that election?

MR. WINER: I object. This instrument isn't in evidence as yet.

THE MEMBER: What is that?

MR. MORRISON: He has identified it.

[80] MR. WINER: It isn't in evidence.

MR. MORRISON: That is right. I will offer it in evidence, if you want it now.

A. Yes, I could.

Q. Suppose you read off the names.

MR. WINER: Excuse me. You said that you would offer it.

MR. MORRISON: I will offer it as soon as he is through with it.

THE MEMBER: Does it show itself what the names are?

MR. MORRISON: It doesn't show the name of the office. It shows the names of the individuals.

THE MEMBER: What is it you want him to testify to?

MR. MORRISON: I want him to tell the names of people who are running for office whose names may appear on the list.

THE MEMBER: You want him to pick out the particular ones who were candidates?

MR. MORRISON: That is it.

A. Michael F. McDonald.

Q. Will you state how much you received from him?

THE MEMBER: That will show there, won't it?

MR. MORRISON: It will show; yes.

THE MEMBER: Just call the names. We can get it [81] from the record.

A. Michael F. McDonald, G. Lester Thomas, Joseph Bialogawicz, John H. Bonin, John A. Riley, Ralph Gitz, Edward F. McGovern, Stanley Leonard, Stanley B. Janowski, John Kridlo.

Q. Was Ralph Gitz a candidate for office?

A. He was.

Q. What do the amounts shown opposite their names represent?

MR. WINER: I object, your Honor. I think the instrument speaks for itself.

THE MEMBER: He may answer that. What do those amounts represent?

A. They were the political assessments of the individual candidates.

MR. WINER: I move that that be stricken out.

Q. Made by whom? That is, who made the assessments?

A. The sub-committee of the Luzerne County Democratic Committee.

THE MEMBER: Let's find out how. Get that straight.

Who determined how much should be paid in by these candidates?

A. A sub-committee was appointed by the County Chairman and they determined.

THE MEMBER: Did the candidate have anything to do [82] with fixing the amount that they demanded of him?

A. That I wouldn't know.

Q. Let me ask you this question: Were you a member of that sub-committee?

A. No, I was not.

Q. So that you don't know just how the sub-committee operates?

A. Not exactly; no.

MR. WINER: If your Honor please, I renew my objection and ask that the word "assessment" be stricken from the record.

THE MEMBER: I understand the sense in which it is used,—this wit[illegible]s used that term. I take it as descriptive rather than in its technical sense.

Q. Were you authorized by the ten candidates whom you have named to make disbursements on their behalf of the amounts that they paid over to your Committee?

A. Yes. That is the duty of the County Treasurer.

THE MEMBER: How were you authorized? In what way?

A. I was authorized in writing.

THE MEMBER: Have you the writing here?

A. No, I don't.

THE MEMBER: Why did you require authorizations?

A. It was always customary.

THE MEMBER: Did you have authorization from these [83] other subscribers, these other people who contributed to the fund?

A. That is right.

THE MEMBER: To pay out their contributions, also?

A. That is right.

THE MEMBER: Everybody who contributed gave you authority to pay out?

A. No. The candidates——

Q. Do you know, Mr. Malinowski, that the law requires you to get written authorization from each candidate to make disbursements?

A. Yes, I do.

MR. WINER: I object.

THE MEMBER: I overrule it. We are just cutting corners on this thing now.

Q. Do you know, Mr. Malinowski, whether these disbursements made by you are for the type of expenses permitted by the Election Code of Pennsylvania?

MR. WINER: I object, your Honor.

THE MEMBER: What is that? Read that to me.

(The question was read.)

MR. WINER: I will object, your Honor.

THE MEMBER: Objection sustained.

Q. Do you know, Mr. Malinowski, whether or not any objection was ever made to the filing of your account, or any [84] exception taken to it?

A. No, there was not.

MR. WINER: I object. I don't see how that is material.

MR. MORRISON: I think——

THE MEMBER: I overrule the objection.

MR. MORRISON: I offer in evidence the statement of John Malinowski, containing a list of receipts and disbursements by him as Treasurer of Luzerne County Democratic Committee for the election held November 7, 1939.

THE MEMBER: That was for the general election?

A. That is right.

THE MEMBER: Admitted as Petitioner's Exhibit 3.

(Document referred to marked Petitioner's Exhibit No. 3 and received in evidence.)

Q. As Treasurer of your Committee, Mr. Malinowski, you have received moneys for the Committee to spend in election campaigns. Do you recall how many campaigns you have acted as Treasurer?

A. In four; from 1936 down to 1940.

Q. Are you familiar with the election Code of Pennsylvania?

A. I am.

Q. As to what a Committee may disburse money for?

A. I am.

[85] Q. Are you satisfied in your own mind that you made proper disbursements?

MR. WINER: I object.

Q. (Continuing.) —for campaign expenses?

THE MEMBER: Objection sustained.

Q. Mr. Malinowski, it has been stipulated that in addition to the $8000 paid over by Judge McDonald as set forth

in paragraph 13, he also expended out of his own funds, in addition to those payments, a total sum of $5017.27. I would like you to look at paragraph 14 of the stipulation and look at the list of disbursements made there. (Showing stipulation to witness.)

A. It is quite ordinary.

MR. WINER: I object.

THE MEMBER: What was the question?

MR. MORRISON: I just told him to look at it.

THE MEMBER: There was no question put to you. Strike the answer.

Q. Mr. Malinowski, in your opinion, would you say that those disbursements constituted ordinary and necessary election expenses by Judge McDonald?

MR. WINER: I object, your Honor.

THE MEMBER: Objection sustained.

MR. MORRISON: Your Honor, the thing is this: Here is a man that has been Treasurer. He knows what campaign [86] expenses—what are needed and what are required and what are permitted under the law. He is testifying as to whether or not these are ordinary and necessary election campaign expenses.

THE MEMBER: The very thing the Board is called upon to decide.

MR. MORRISON: No, no. The Board is called upon to decide whether or not these disbursements are ordinary and necessary business expenses under the Revenue Act, not under the Election Code.

THE MEMBER: It is under the Revenue Act we are operating.

MR. MORRISON: What I am talking about are ordinary and necessary expenses in connection with Judge

McDonald seeking election to office as Judge to succeed himself.

THE MEMBER: I understand it. Objection sustained.

MR. MORRISON: If your Honor please, I propose to offer to prove by this witness that the disbursements made by Judge McDonald to the Primary Campaign Committee of the Democratic Party and to the County Campaign Committee at the general election, and the disbursements made by Judge McDonald for filing fees, printing and stationery, telephone, rental of radio, hire of clerks, postage paid the United States Post Office, rental of typewriter, advertising, travel expenses, were ordinary and necessary expenses incurred by [87] Judge McDonald in the election campaign of 1939 for Judge to succeed himself at January 1, 1940.

THE MEMBER: The offer is denied. You may have an exception.

MR. MORRISON: I will take the exception.

Q. Mr. Malinowski, you read over that stipulation dealing with the expenses by Judge McDonald. Would you say that other candidates for office would have expenses similar in nature?

A. I would.

MR. WINER: I object.

THE MEMBER: Just a moment.

MR. WINER: I object.

THE MEMBER: Objection sustained. It is immaterial.

MR. MORRISON: I may be repeating a question here. I thought I asked it. My colleagues seem to think I have not.

Q. Were the disbursements by you in the 1939 campaign, that is, as Treasurer of the Democratic County Committee, for the benefit of all those ten candidates?

A. They were.

MR. WINER: I object, your Honor.

THE MEMBER: That is the same question you asked before. I think I ruled it out. The answer may be stricken.

[88] MR. MORRISON: Your Honor, I want to have it noted on the record that you will grant me an exception.

THE MEMBER: You have an exception to all adverse rulings.

MR. MORRISON: You may cross-examine.

MR. WINER: No questions.

THE MEMBER: That is all, Mr. Malinowski.

(Witness excused.)

MR. MORRISON: Petitioner rests.

THE MEMBER: Petitioner rests.

MR. WINER: Respondent rests.

THE MEMBER: How much time do you want for briefs?

MR. MORRISON: Simultaneous briefs in 45 days?

THE MEMBER: 45 days simultaneous briefs; 15 days to reply.

THE CLERK: The first brief will be due November 2nd; November 17th for the reply briefs.

THE MEMBER: We will adjourn to 9:30 tomorrow morning.

(Hearing concluded.)

COMMONWEALTH OF PENNSYLVANIA,
LUZERNE COUNTY, ss:

No. 1364 of 19 36

J. Joseph Morris, REGISTER FOR THE PROBATE OF WILLS AND GRANTING LETTERS OF ADMINISTRATION in and for the County of Luzerne, in the Commonwealth of Pennsylvania

Do hereby certify and make known that on the 8th *day of* December *in the year of our Lord one thousand nine hundred and* thirty-six LETTERS TESTAMENTARY *on the Estate of* Mary C. Stegmaier *deceased were granted unto* George J. Stegmaier, George C. Cuskelberger and C. F. McDonald *who having first been duly sworn to well and truly administer the goods and chattels, rights and credits which were of said deceased according to law.*

Given under my hand and seal of the Register's Office at Wilkes-Barre, this 8th *day of* December *A. D. one thousand nine hundred and* thirty-six

Joseph Morris *Register*

Lucille Wolfe *Deputy*

PETITIONER'S EXHIBIT 1

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF LUZERNE)

I, Paul Pengelly, Election Clerk in the office of the County Commissioners of Luzerne County, on October 13, 1939, do hereby certify that the annexed account of Thomas J. Callahan, Treasurer of the Luzerne County Democratic Primary Campaign Committee for the Primary Election of September 12, 1939, was filed with me as said clerk on October 13, 1939, and that said account is the original account remaining on file as a public document in the Commissioner's Office of Luzerne County.

In witness whereof, I have hereunto set my hand this 16th day of September, 1942.

Paul Pengelly

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF LUZERNE)

I, Stephen J. Tkach, Chief Clerk of the County Commissioners of Luzerne County in the State of Pennsylvania, having a seal, do hereby certify that Paul Pengelly by whom the foregoing certificate was made and whose name is subscribed thereto was on October 13, 1939, the Election Clerk in the Commissioner's Office of Luzerne County in charge of the filing of Primary and General Election accounts and that I am well acquainted with his handwriting and know that the signature on the foregoing certificate is his genuine signature.

In witness whereof, I have hereunto set my hand and affixed the official seal of the County Commissioners of Luzerne County this sixteenth day of September, 1942.

Stephen J. Tkach
Chief Clerk of the County Commissioners of Luzerne County.

11-07-2000

NOTE This blank is to be used in case the aggregate receipts or disbursements of a political committee, in connection with any nomination or election, shall exceed fifty dollars. For the office of United States Senator, Governor, Lieutenant Governor, Auditor General, Secretary of Internal Affairs, State Treasurer, and Judge of the Supreme or Superior Court, it must be filed, within thirty days after the Primary and within thirty days after the election, with the Secretary of the Commonwealth; and, for all other offices, with the County Board of Elections.

Every such account shall be accompanied by vouchers for all sums expended ten dollars in amount or over. It shall be unlawful for any candidate, or treasurer of a political committee, or person acting as such treasurer, to disburse any money received from any anonymous source.

COMMONWEALTH OF PENNSYLVANIA

I, Thom . J. Callahan, Treasurer of The Luzerne County

Democratic Primary Campaign Committee -
(Give name of committee and/or name of candidate for whom the committee and treasurer is acting)

for the Primary Election, September 12, 1939
(Indicate the Primary or Election and date thereof)

DO CERTIFY, That the following is a full, true and detailed account of each and all of the receipts, expenditures, disbursements and unpaid debts and obligations of said committee and of every officer and other person acting under authority or on behalf of said committee or treasurer, in accordance with the requirements of the Pennsylvania Election Code.

RECEIPTS

DATE RECEIVED	FROM WHOM RECEIVED	AMOUNT
Aug. 31, 1939	M[illegible] P. McDonald	1000 00
Aug. 31, 1939	J[illegible] A. Flynn	910 00
Aug. 31, 1939	[illegible] Thomas	00
Aug. 31, 1939	J[illegible] Kelly	450 00
Aug. 31, 1939	Stanley Leonard	360 00
Aug. 31, 1939	J[illegible] Plaskowicz	350 00
Aug. 31, 1939	A[illegible] Sitz	500 00
Aug. 31, 1939	John A. Foley	500 00
August 31, 1939	[illegible] M. Jonaitis	500 00
Aug. 31, 1939	[illegible] T. McGovern	500 00

EXPENDITURES OR DISBURSEMENTS

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT	
Sept. 1, 1939	Sunday Independent	Advertisement	252	00
Sept. 1, 1939	Hazleton Broadcasting Serv., Inc.	Radio Service	187	20
Sept. 1, 1939	The Scrantonian	Advertisement	60	00
Sept. 1, 1939	Deemer and Company	One box paper	1	35
Sept. 1, 1939	The Lockhart Club	Advertisement	15	00
Sept. 1, 1939	James Sheridan	Salary	75	00
Sept. 2, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 2, 1939	Mary Ryan Bell	Salary	40	00
Sept. 2, 1939	Wilkes-Barre Record	Advertisement	21	00
Sept. 5, 1939	The Plain Speaker	Radio Advertisement	18	00
Sept. 6, 1939	Wilkes-Barre Record	Advertisement	152	88
Sept. 6, 1939	The Leader Publishing Company	Radio Advertisement	48	15
Sept. 6, 1939	Deemer and Company	Stationery Supplies	5	00
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	10	92
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	24	00
Sept. 7, 1939	Hazleton Broadcasting Company	Radio Service	86	80
Sept. 7, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 7, 1939	Bratstvo Slovak News	Advertisement	82	00
Sept. 7, 1939	Wilkes-Barre Publishing Co.	Advertisement	166	80
Sept. 7, 1939	Wilkes-Barre Publishing Company	Advertisement	19	60
Sept. 7, 1939	F. J. Quinn, Postmaster	Stamps	5	00
Sept. 7, 1939	The Scrantonian	Advertisement	60	00
Sept. 7, 1939	The Dallas Post	Advertisement	40	00
Sept. 8, 1939	Wilkes-Barre Record	Advertisement	12	00
Sept. 8, 1939	Times-Leader Publishing Co.	Advertisement	13	80
Sept. 8, 1939	Pittston Bulletin	Advertisement	70	00
Sept. 8, 1939	Nanticoke Telegram	Advertisement	15	00
Sept. 8, 1939	The Leader Publishing Co.	Radio Advertisement	19	60
Sept. 11, 1939	Wilkes-Barre Record	Advertisement	196	00
Sept. 11, 1939	Bell Telephone Company	Telephone Service	39	65
Sept. 11, 1939	The Pittston Gazette Company	Advertisement	85	00
Sept. 11, 1939	The Mountain Echo	Advertisement	30	00
Sept. 11, 1939	The Labor News	Advertisement	50	00
Sept. 11, 1939	Wilkes-Barre Publishing Company	Radio Advertisement	9	80
Sept. 11, 1939	Peter Daugert	Rental-Crystal Ballroom	10	00
Sept. 11, 1939	Stanton W.B.A.X.	Radio Service	87	50
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Radio Advertisement	50	88
			19	64

Petitioner's E

Sept. 1, 1939	James Sheridan	[illegible]	75	00
Sept. 2, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 2, 1939	Mary Ryan Bell	Salary	40	00
Sept. 2, 1939	Wilkes-Barre Record	Advertisement	21	00
Sept. 5, 1939	The Plain Speaker	Radio Advertisement	18	00
Sept. 6, 1939	Wilkes-Barre Record	Advertisement	152	88
Sept. 6, 1939	The Leader Publishing Company	Radio Advertisement	48	15
Sept. 6, 1939	Deemer and Company	Stationery Supplies	5	00
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	10	92
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	24	00
Sept. 7, 1939	Hazleton Broadcasting Company	Radio Service	66	80
Sept. 7, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 7, 1939	Bratstvo Slovak News	Advertisement	82	00
Sept. 7, 1939	Wilkes-Barre Publishing Co.	Advertisement	166	80
Sept. 7, 1939	Wilkes-Barre Publishing Company	Advertisement	19	60
Sept. 7, 1939	M. J. Quinn, Postmaster	Stamps	5	00
Sept. 7, 1939	The Scrantonian	Advertisement	60	00
Sept. 7, 1939	The Dallas Post	Advertisement	40	00
Sept. 8, 1939	Wilkes-Barre Record	Advertisement	12	00
Sept. 8, 1939	Times-Leader Publishing Co.	Advertisement	15	60
Sept. 8, 1939	Pittston Bulletin	Advertisement	70	00
Sept. 8, 1939	Nanticoke Telegram	Advertisement	15	00
Sept. 8, 1939	The Leader Publishing Co.	Radio Advertisement	19	60
Sept. 11, 1939	Wilkes-Barre Record	Advertisement	196	00
Sept. 11, 1939	Bell Telephone Company	Telephone Service	39	65
Sept. 11, 1939	The Pittston Gazette Company	Advertisement	85	00
Sept. 11, 1939	The Mountain Echo	Advertisement	30	00
Sept. 11, 1939	The Labor News	Advertisement	50	00
Sept. 11, 1939	Wilkes-Barre Publishing Company	Radio Advertisement	9	80
Sept. 11, 1939	Peter Daugert	Rental-Crystal Ballroom	10	00
Sept. 11, 1939	Station W.B.A.X.	Radio Service	87	50
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Radio Advertisement	50	98
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Advertisement	190	44
Sept. 11, 1939	Congregation Bnai. Israel	Advertisement	10	00
Sept. 14, 1939	Station W. B. R. E.	Radio time	150	00

P. 3

Petitioner's Exhibit 2

Disbursements and Contributions

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
Sept. 14, 1939	The Plain Speaker-Sentinel	Advertisement	[illegible]
Sept. 14, 1939	Wilkes-Barre Independent	Advertisement	[illegible]
Sept. 14, 1939	Polish Weekly "Gornik"	Advertisement	[illegible]
Sept. 14, 1939	Penna. Power & Light Company	Light	[illegible]
Sept. 14, 1939	Remington-Rand	Rental of Typewriters	[illegible]
Sept. 14, 1939	James Sheridan	[illegible]	[illegible]
Sept. 14, 1939	Mary Ryan Hall	Salary	[illegible]
Sept. 14, 1939	Receiver, Penna. Lib. Bank & Tr. Co.	Rental	[illegible]
Sept. 22, 1939	The Collins Press	Printing	[illegible]
Sept. 22, 1939	Michael Phillips	Rental of Hall	15 00
Sept. 14, 1939	James Sheridan	Payment of Poll-Men	35 00
Sept. 8, 1939	John Dempsey	Entertainment	10 00
Sept. 14, 1939	Sterling Hotel	Luncheas, Dinners, Room Rent	119 70
Sept. 22, 1939	Sterling Hotel	Luncheas, Dinners, Room Rent	28 00
Sept. 11, 1939	Thomas J. Callahan	Personal and Traveling Expenses, gasoline, etc.	100 00
Sept. 11, 1939	James Sheridan	Personal and Traveling Expenses, gasoline, etc.	80 00
Sept. 11, 1939	Auto hire and poll-men at $5.00 each		280 00
Sept. 2, 1939	Polish Weekly "Gornik"	Mats	18 00

UNPAID DEBTS AND OBLIGATIONS

DATE INCURRED	TO WHOM DUE	PURPOSE	AMOUNT
	NONE		

Thomas J. Cullen Treasurer

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF LUZERNE, } ss:

Personally appeared before me, the above named [illegible],
who made oath that the foregoing statement, by him signed, is in all respects correct and true to the best of his knowledge and belief.

Sworn to and subscribed before me,
this 11th day of October,
A. D. 192[illegible]

Dorothy C. Kennedy
Notary Public.
My comm. exp. 5-2-31

Thomas J. Cullen

[SEAL]

Petitioner's Exhibit 2

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF LUZERNE)

I, Paul Pengelly, Election Clerk in the office of the County Commissioners of Luzerne County on December 7, 1938, do hereby certify that the annexed account of John Kalinoski, Treasurer of the Luzerne Democratic Committee for the election on November 7, 1938, was filed by me as said clerk on Thursday, December 7, 1938, and that said account is the original account remaining on file as a public account in the Commissioner's office of Luzerne County.

In witness whereof, I have hereunto set my hand this 16th day of September, 1942.

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF LUZERNE)

I, Stephen J. Farr, Chief Clerk of the County Commissioners of Luzerne County in the State of Pennsylvania, having a seal, do hereby certify that Paul Pengelly by whom the foregoing certificate was made and whose name is subscribed thereto was on December 7, 1938, the Election Clerk in the Commissioner's office of Luzerne County in charge of the filing of Primary and General Election accounts and is well acquainted with his handwriting and know that the signature on the foregoing certificate is his genuine signature.

In witness whereof, I have hereunto set my hand and affixed the official seal of the County Commissioners of Luzerne County this sixteenth day of September, 1942.

Stephen J. Farr
Chief Clerk of the County Commissioners of Luzerne County.

PETITIONER'S EXHIBIT 3

11-39-4000

This blank is to be used in case the aggregate receipts or disbursements of a political committee, in connection with any nomination or election, shall exceed fifty dollars. For the office of United States Senator, Governor, Lieutenant Governor, Auditor General, Secretary of Internal Affairs, State Treasurer, and Judge of the Supreme or Superior Court, it must be filed within thirty days after the Primary and within thirty days after the election, with the Secretary of the Commonwealth; and for all other offices, with the County Board of Elections.

Every such account shall be accompanied by vouchers for all sums expended ten dollars in amount or over. It shall be unlawful for any candidate or treasurer of a political committee or person acting as such treasurer, to disburse any money received from any anonymous source.

COMMONWEALTH OF PENNSYLVANIA

I, John Malinowski Treasurer of

LUZERNE COUNTY DEMOCRATIC COMMITTEE

(Give title of committee and/or name of candidate for whom the committee and treasurer is acting)

for the ELECTION - NOVEMBER 7, 1939.

(Indicate the Primary or Election and date thereof)

DO CERTIFY, That the following is a full, true and detailed account of each and all of the receipts, expenditures, disbursements and unpaid debts and obligations of said committee and of every officer and other person acting under authority or on behalf of said committee or treasurer, in accordance with the requirements of the Pennsylvania Election Code.

RECEIPTS

DATE RECEIVED	FROM WHOM RECEIVED	AMOUNT

SUMMARY.

Balance on Hand - November 28, 1938	$2,813.81
Bell Telephone Company of Pa. (Refund on Phone Deposit)	14.00
Political Contributions Received	37,587.06
TOTAL RECEIPTS	$40,414.87

Petitioner's Exhibit

RECEIPTS.

DATE RECEIVED	FROM WHOM RECEIVED	AMOUNT
11-29-38	Balance on Hand	$2,813.81
12-10-38	Bell Telephone Co. of Pa. ([illegible] on Telephone Deposit)	14.00
	John Costerio	50.00
	T. U. Kolenda	25.00
	Bessie Walsh	15.00
	Agnes Sharpe	10.00
	Ward Hunsinger	10.00
	Robert Dierly	10.41
	Thomas Jones	5.00
	Irwin C. Davis	8.00
	James Dougherty	15.00
	James F. Keighron	7.00
	Harry Schaub	90.00
12-27-38	Wilbur Kearney	[illegible]
	F. M. Margie	100.00
1-18-39	Edward Strzalka	50.00
	John Heffernan	50.00
	Agnes Sharpe	10.00
	F. M. Wolfe	10.00
2-10-39	Wilbur Kearney	10.00
	Joseph O'Hare	30.00
	Edward Wasilewski	25.00
3-21-39	F. J. Connolly	15.00
	Agnes Sharpe	[illegible]
	Wilbur Kearney	10.[illegible]
5-8-39	Harry Schaub	[illegible]
	Joseph Rekus	25.00
	F. J. Connolly	45.00
6-19-39	Wilbur Kearney	7.00
	F. M. Margie	[illegible]
10-17-39	Michael F. McDonald	[illegible]
	J. Lester Thomas	[illegible]
10-11-39	Joseph Bialogewicz	[illegible]
	Wilbur Kearney	[illegible]
	Agnes Sharpe	[illegible]
10-[illegible]-39	Wilson C. Reider	[illegible]
	H. W. Reider	[illegible]
10-20-39	John H. Bonin	[illegible]
10-23-39	John A. Riley	[illegible]
10-25-39	Ralph Gitz	[illegible]
10-26-39	Edward F. McGovern	[illegible]
	Joseph Walsh	50.00
	Edward Kaledonis	45.00
	Benjamin Stark	50.00
	Michael Lyons	40.00
	T. J. Wedzinski	175.00
	Sylvester Grablick	[illegible]
	Louis Brominski	50.00
	Charles Prohaska	40.00
	Joseph Gillis	75.00
	E. N. Johnson	[illegible]
	Stanley Hoffman	[illegible]
	John Karmilowicz	[illegible]
	Edmund Miklewski	[illegible]
10-28-39	Michael F. McDonald	[illegible]
	John H. Bonin	[illegible]
10-30-39	Stanley Leonard	1,800.00
	Thomas J. Callahan, Treas.	[illegible]
	Stanley B. Janowski	[illegible]
10-31-39	John Kridlo	[illegible]
	A. N. Mifflin	[illegible]
	Edward J. Quinn	[illegible]

	James Dougherty	10.00
	James F. Kelghron	7.00
	Harry Schaub	90.00
10-27-39	Wilbur Kearney	10.00
	P. M. Margle	100.00
1-18-39	Edward Strzalka	20.00
	John Heffernan	50.00
	Agnes Sharpe	10.00
	P. M. Wolfe	10.00
1-20-39	Wilbur Kearney	10.00
	Joseph O'Keefe	5.00
	Edward Marlewski	25.00
3-21-39	J. J. Connolly	15.00
	Agnes Sharpe	5.00
	Wilbur Kearney	10.00
5- 4-39	Harry Schaub	5.00
	Joseph Rekus	25.00
	J. J. Connolly	25.00
6-19-39	Wilbur Kearney	5.00
	P. M. Margle	100.00
10- 7-39	Michael F. McDonald	1,000.00
	Lester Thomas	500.00
10-11-39	Joseph Bialogowicz	10.00
	Wilbur Kearney	10.00
	Agnes Sharpe	10.00
	Edward Heller	5.00
	P. M. Heller	5.00
10-20-39	John H. Bonin	5,000.00
10-23-39	John A. Riley	5,000.00
10-25-39	Ralph Gitz	5,000.00
10-26-39	Edward F. McGovern	1,000.00
	Joseph Walsh	50.00
	Edward Kaledpnis	50.00
	Benjamin Stark	50.00
	Michael Lyons	40.00
	T. J. Wadzinski	175.00
	Sylvester Grablick	50.00
	Louis Brominski	50.00
	Charles Prohaska	40.00
	Joseph Gillis?	75.00
	P. M. Johnson	25.00
	Stanley Hoffman	25.00
	John Karwilowicz	50.00
	Edmund Wtklewski	50.00
10-28-39	Michael F. McDonald	2,000.00
	John H. Bonin	5,000.00
10-30-39	Stanley Leonard	1,800.00
	Thomas J. Callahan, Treas.	1,199.15
	Stanley B. Jankowski	1,000.00
10-31-39	John Kridlo	1,500.00
	A. M. Mifflin	40.00
	Edward J. Quinn	25.00
	William J. Cotter	10.00
11- 1-39	Frank Cummings	60.00
	Anne Mangan	25.00
	Mary O'Haire	25.00
11- 8-39	M. J. Torlinski	50.00
	Peter Swanton	50.00
	T. J. Mangan	100.00
		$32,595.15

Petitioner's Exhibit 3.

RECEIPTS.

DATE RECEIVED	FROM WHOM RECEIVED	AMOUNT
11- 3-39	SUB-TOTAL BROUGHT FORWARD	$38,599.87
11- 3-39	John W. Murphy	50.00
	Kathleen Kelly	100.00
	C. Harold Wagner	50.00
11- 4-39	Michael Ruddy	50.00
	Lloyd L. Ellsworth	25.00
	Stanley B. Janowski	1,000.00
	Enoch Thomas	100.00
	Sydelle B. Hyman	50.00
	Warren W. Williams	40.00
	J. W. Morris	25.00
	John F. Moore	25.00
	D. C. Wysavage	50.00
11- 6-39	Frank J. Schmitt	100.00
	John T. Mullhall	35.00
	Michael O'Malley	50.00
	Charles Reilly	25.00
	TOTAL RECEIPTS	$40,414.87

EXPENDITURES OR DISBURSEMENTS.

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
10-16-39	Lukasic Flower Shop	Political Meeting	$20.00
10-17-39	Penna. Power & Light Company	Office Maintenance	13.22
	Mary Ryan Bell	Clerical Services	125.00
	Helen Pianovich	" "	90.00
10-27-39	Glen Summit Spring Water Co.	Office Maintenance	6.50
10-31-39	Bell Telephone Company of Pa.	Telephone Service	56.58
	Penna. Secretary of Banking	Office Rental	45.00
9-19-39	Bell Telephone Company of Pa.	Telephone Service	52.38
	Penna. Power & Light Company	Office Maintenance	8.41
	Benman the Florist	Political Meeting	15.00
	Penna. Secretary of Banking	Office Rental	100.00
5-18-39	Penna. Power & Light Company	Office Maintenance	.97
	Bell Telephone Company of Pa.	Telephone Service	32.50
	Penna. Secretary of Banking	Office Rental	50.00
5-25-39	John H. Bigelow & E. F. McGovern	Legal Services	1,500.00
5- 8-39	Penna. Secretary of Banking	Office Rental	100.00
	Bell Telephone Company of Penna.	Telephone Service	47.64
7-26-39	Bell Telephone Company of Penna.	" "	54.10
	Penna. Power & Light Company	Office Maintenance	3.52
	Penna. Secretary of Banking	Office Rental	100.00
8- 1-39	Democratic State Committee	Political Contribution	300.00
	Bell Telephone Company of Penna.	Telephone Service	17.45
10-14-39	Luzerne County News Company	Office Maintenance	3.96
	Benman the Florist	Political Meeting	5.00
	The Sterling Hotel	" "	102.00
	Glen Summit Spring Water Co.	Office Maintenance	16.90
	Deemer & Company	Office Stationery	11.70
	The Collins Press	Printing	31.50
	Penna. Secretary of Banking	Office Rental	50.00
	James P. Sheridan	Clerical Services	150.00
10-25-39	Kupstas - McCormack - Williams	Advertising	1,613.00
	Remington Rand Inc.	Typewriter Rental	2.75
	Penna. Power & Light Company	Office Maintenance	5.90
	Bell Telephone Company of Penna.	Telephone Service	91.02
	Charles H. Dietrick	Printing	60.00
	Philip F. Fiesseler	Advertising	10.00
	Italian Citizen's Club	"	20.00
	William A. O'Brien	"	250.00
	The Collins Press	Printing	969.50
	Wilkes-Barre Firemen Association	Advertising	25.00
	Rev. J. K. Gryczka	"	15.00
	Penna. Secretary of Banking	Office Rental	35.00
	Federation Newer Nationalities Committee, Stephen Farris, Treas.	Political Contribution	3,000.00
10-26-39	Kupstas - McCormack - Williams	Advertising	2,500.00
10-31-39	Dorothy Kennedy	Clerical Services	75.00
	Elva McCarty	" "	75.00
	Mary Ryan Bell	" "	125.00
	James P. Sheridan	" "	150.00
	Kupstas - McCormack - Williams	Advertising	1,500.00
11- 2-39	Kupstas - McCormack - Williams	"	950.00
	Frank Correale, Treas.	Election Expenses 1 - Dist	3,500.00
	Frank Donnelly, Treas.	" " 2 - "	3,500.00
	John R. Owens, Treas.	" " 3 "	3,500.00
	John Bednar, Treas.	" " 4 "	3,000.00
	Stanley Reppy, Treas.	" " 5 "	3,000.00
	Thomas J. Callahan, Treas.	" " 6 "	3,500.00
	John Conlon, Jr., Treas.	" " 7 "	3,500.00
	M. E. Moore & Son	Political Rally	100.00
	Albert Brandau	"	50.00
	Joseph Dowling	"	30.00
	A. L. Dailey	"	[illegible]

Petitio

	[illegible] the Florist	Political Meeting	10.00
	Penna. Secretary of Banking	Office Rental	100.00
3-18-39	Penna. Power & Light Company	Office Maintenance	.97
	Bell Telephone Company of Pa.	Telephone Service	32.50
	Penna. Secretary of Banking	Office Rental	50.00
3-25-39	John H. Bigelow & E. F. McGovern	Legal Services	1,500.00
5- 8-39	Penna. Secretary of Banking	Office Rental	100.00
	Bell Telephone Company of Penna.	Telephone Service	47.64
7-26-39	Bell Telephone Company of Penna.	" "	56.10
	Penna. Power & Light Company	Office Maintenance	3.52
	Penna. Secretary of Banking	Office Rental	100.00
8- 1-39	Democratic State Committee	Political Contribution	500.00
	Bell Telephone Company of Penna.	Telephone Service	17.45
10-14-39	Luzerne County News Company	Office Maintenance	3.96
	Bauman the Florist	Political Meeting	5.00
	The Sterling Hotel	" "	102.00
	Glen Summit Spring Water Co.	Office Maintenance	16.90
	Deemer & Company	Office Stationery	11.70
	The Collins Press	Printing	31.50
	Penna. Secretary of Banking	Office Rental	50.00
	James P. Sheridan	Clerical Services	150.00
10-25-39	Kupstas - McCormack - Williams	Advertising	1,613.00
	Remington Rand, Inc.	Typewriter Rental	2.75
	Penna. Power & Light Company	Office Maintenance	5.90
	Bell Telephone Company of Penna.	Telephone Service	91.02
	Charles H. Dietrick	Printing	60.00
	Philip F. Fieseler	Advertising	10.00
	Italian Citizen's Club	"	20.00
	William A. O'Brien	"	250.00
	The Collins Press	Printing	969.50
	Wilkes-Barre Firemen Association	Advertising	25.00
	Rev. J. E. Gryczka	"	15.00
	Penna. Secretary of Banking	Office Rental	35.00
	Federation Newer Nationalities Committee, Stephen Farris, Treas.	Political Contribution	3,000.00
10-26-39	Kupstas - McCormack - Williams	Advertising	2,500.00
10-31-39	Dorothy Kennedy	Clerical Services	75.00
	Elva McCarty	" "	75.00
	Mary Ryan Bell	" "	125.00
	James P. Sheridan	" "	150.00
	Kupstas - McCormack - Williams	Advertising	1,500.00
11- 2-39	Kupstas - McCormack - Williams	"	950.00
	Frank Correale, Treas.	Election Expenses 1 - Dist	3,500.00
	Frank Donnelly, Treas.	" " 2 - "	3,500.00
	John R. Owens, Treas.	" " 3 "	3,500.00
	John Bednar, Treas.	" " 4 "	3,000.00
	Stanley Reppy, Treas.	" " 5 "	3,000.00
	Thomas J. Callahan, Treas.	" " 6 "	3,500.00
	John Conlon, Jr., Treas.	" " 7 "	3,500.00
	M. E. Moore & Son	Political Rally	100.00
	Albert Brandau	" "	50.00
	Joseph Dowling	" "	30.00
	A. L. Dailey	" "	15.00
11- 6-39	Polish Weekly Gornik	Advertising	206.00
	Roscoe Advertising Agency	"	125.00
	The Press	"	20.00
	Bauman the Florist	Political Rally	10.00
	Remington Rand Inc.	Typewriter Rental	18.00
	Deemer & Company	Office Stationery	44.06
	Kantrowitz	Office Maintenance	10.00
		SUB-TOAL	$38,695.58

Petitioner's Exhibit 3

EXPENDITURES OR DISBURSEMENTS.

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
		SUB-TOTAL FORWARD	$38,695.58
11- 6-39	Glen Summit Springs Water Co.	Office Maintenance	6.50
	Penna. Secretary of Banking	Office Rental	65.00
	Hazleton Broadcasting Service	Radio Rental	309.15
	Radio Station W B A X	" "	833.00
	Radio Station W B R E	" "	385.00
		TOTAL DISBURSEMENTS	$40,294.23

EXPENDITURES OR DISBURSEMENTS

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT

UNPAID DEBTS AND OBLIGATIONS

DATE INCURRED	TO WHOM DUE	PURPOSE	AMOUNT
10-30-39	Cino J. Pusi	Political Rally (Band)	$85.00
11- 1-39	Charles H. Dietrick	Printing	30.00
11- 3-39	The Scranton Times	Advertising	84.00
11- 6-39	The Collins Press	Printing	1,939.14

November 10, 1939 TOTAL BUILDING AND LOAN OBLIGATIONS. $2,078.14

John Malinowski, Treasurer

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LUZERNE.

Personally appeared before me, the above named John Malinowski, Treasurer who made oath that the foregoing statement, as to him signed, is in all respects correct and true to the best of his knowledge and belief.

Sworn to and subscribed before me,
this 10 day of,
A. D. 1939

[SEAL]

Petitioner's Exhibit 3

Computation proved

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES

INDIVIDUAL INCOME TAX RETURN 1939

Page 1

(Auditor's Stamp)

U. S. BOARD OF TAX APPEALS
DIV. 2 1091 c/
SEP 17 1942

A

FOR NET INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

or fiscal year beginning ...., 1939, and ended ...., 1940

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Michael F. McDonald
(Name)

3 Brown Street
(Street and number, or rural route)

Ashley Luzerne Penna.
(Post office) (County) (State)

(Do not use these spaces)

1 0 1
200879

(Cashier's Stamp)

Cash—Check—M. O.

.25 50

Item and Instruction No.	INCOME				
1.	Salaries and other compensation for personal services. (From Schedule A)	$ 20,000	00		
2.	Dividends	1,791	25		
3.	Interest on bank deposits, notes, mortgages, etc.	7	01		
4.	Interest on corporation bonds				
5.	Taxable interest on Government obligations, etc. (From Schedule B)				
6.	Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Furnish names and addresses)				
7.	Income from fiduciaries. (Furnish names and addresses)				
8.	Rents and royalties. (From Schedule C)				
9.	Income (or loss) from business or profession. (From Schedule D)	(2,171	18)		
10.	(a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)				
	(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)				
	(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)				
11.	Other income (including income from annuities) (State source) Directors Fees	88	00		
12.	Total income in items 1 to 11. (Enter nontaxable income in Schedule D)			$ 18,665	15
	DEDUCTIONS				
13.	Contributions paid. (Explain in Schedule H)	$ 1,025	12		
14.	Interest. (Explain in Schedule H)	1,510	38		
15.	Taxes. (Explain in Schedule H)	546	14		
16.	Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)				
17.	Bad debts. (Explain in Schedule H)				
18.	Other deductions authorized by law. (Explain in Schedule H)				
19.	Total deductions in items 13 to 18.			2,881	59
20.	Net income (item 12 minus item 19)			$ 15,783	54

COMPUTATION OF TAX

21. Net income (item 20 above)			$ 15,783	54	28. Normal tax (4% of item 27)			$ 475	34
22. Less: Personal exemption. (From Schedule J-1)	$ 2500	00	2		29. Surtax on item 24. (See Instruction 29)			542	68
23. Credit for dependents. (From Schedule J-2)			2,800	00	30. Total (item 28 plus item 29)			$	
					31. Total tax (item 30, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)			$	
24. Balance (surtax net income)			$ 13,283	54	32. Less: Income tax paid at source	$			
25. Less: Interest on Government obligations, etc. (See Instruction 25)	$				33. Income tax paid to a foreign country or U. S. possession (Attach Form 1116)				
26. Earned income credit. (From Schedule K-1 or K-2)	1400	00	1,400	00					
27. Balance subject to normal tax			$ 11,883	54	34. Balance of tax (item 31 minus items 32 and 33)			$ 1,018	02

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return ($5 will be assessed if duplicate copy is not filed)

a1

RESPONDENT'S EXHIBIT A

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of income	2. Amount	3. Expenses (itemize)	4. Amount
Executor Estate Mary S. Stegmaier	$ 20,000 00		$
Total of column 2 minus total of column 4 (enter as item 1, page 1)			$

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Interest exempt from taxation	5. Interest on amount in excess of exemption
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	
(e) United States Savings Bonds and Treasury Bonds			$	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)			None	
(g) Total (enter as item 3, page 1)				$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 4, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

(Show business name and address if different from name and address on page 1)

1. Total receipts (state nature of business or profession) Judge & Attorney .... $ 11,500 12

COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
2. Labor	$	10. Salaries not included as "Labor" (do not deduct compensation for yourself)	$
3. Material and supplies		11. Interest on business indebtedness	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (itemize below)		13. Losses (explain below) Re-election Expenses	13,017 27
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. Total (lines 2 to 6)	$	15. Depreciation, obsolescence, and depletion (explain in Schedule E)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemize below or on separate sheet)	1,853 98
9. Net cost of goods sold (line 7 minus line 8)	$	17. Total (lines 10 to 16)	$

If the production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

18. Total deductions (line 9 plus line 17) 14,871 25

19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1) .... $ (3,371 13)

1 5
7
−8

Explanation of deductions claimed in lines 5, 13, and 16

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10)

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule E)	8. Gain or loss (column 4 plus column 7 minus the sum of columns 5 and 6)	9. Percentage	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔	$
								66⅔	
								66⅔	
								66⅔	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
								50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (not in excess of net income for such year)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and "common trust funds"		5. Total net gain or loss to be taken into account in columns 2, 3, and 4 of this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter as item 10 (a), page 1, amount of gain shown in column 5)	$	$	$	$	$	$	No net loss allowable (see Instruction 10)
2. Total net long-term capital gain or loss (enter as item 10 (b), page 1, amount of gain or loss shown in column 5)		$	$	$	$	$	$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: ____________

If any of the above items were acquired by you other than by purchase, explain fully how acquired: ____________

COMPUTATION OF ALTERNATIVE TAX
(To be used only in the case of a net long-term capital gain or loss)

1. Net income (item 20, page 1). (See Instruction 10)	$		10. Normal tax (4% of line 9)	$
2. (a) Net long-term capital gain (item 10 (b), page 1)			11. Surtax on line 6. (See Instruction 29)	
(b) Net long-term capital loss (item 10 (b), page 1)			12. Partial tax (line 10 plus line 11)	$
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 10)	$		13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemption. (From Schedule J-1)	$		(b) 30% of net long-term capital loss (30% of line 2 (b))	
5. Credit for dependents. (From Schedule J-2)			14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$
6. Balance (surtax net income)	$		15. Total normal tax and surtax (item 30, page 1)	$
7. Less: Interest on Government obligations, etc. (See Instruction 25)	$		16. Tax liability (if a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)	$
8. Earned income credit. (From Schedule K-1 or K-2). (See Inst. 10)				
9. Balance subject to normal tax	$			

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 10)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule E)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 10 (c), page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items: ____________

If any of the above items were acquired by you other than by purchase, explain fully how acquired: ____________

Respondent's Exhibit A

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

1. Item No.	2. Explanation	3. Amount
		$

1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
		$

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B. (See Instruction G)

1. Source of income	2. Nature of income	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption

Status	Number of months during the year in each status	Credit claimed
Single, or married and not living with husband or wife		$
Married and living with husband or wife	12	2,500 00
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 18 years old	Number of months during the year: Over 18 years old	Credit claimed
			$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $5,000 or less, use only this part of schedule

Net income (item 20, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is more than $5,000, use only this part of schedule

Earned net income (not more than $14,000)	$ 14,000
Net income (item 20, page 1)	14,782
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $30)	1,400 00

QUESTIONS

1. State your principal occupation or profession Judge & Attorney
2. Check whether you are a citizen ☒ or a resident alien ☐
3. If you filed a return for the preceding year, to which Collector's office was it sent? Scranton
4. Are items of income or deductions of both husband and wife included in this return? Husband Only-Wife no income
5. State (a) Name of husband or wife if separate return was made
   (b) Personal exemption, if any, claimed therein
   (c) Collector's office to which it was sent
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "yes" or "no") No (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code, as amended, and the regulations issued under authority thereof.

Subscribed and sworn to by Marshall F. McDonald before me this 13 day of March 1940

Herman C. McHugh
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction E)

MY COMMISSION EXPIRES APRIL 13, 1940

(Signature)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 15 day of March 1940

Herman C. McHugh
(Signature and title of officer administering oath)

MY COMMISSION EXPIRES APRIL 13, 1940

Herman C. Thomas
(Signature of person preparing the return)

(Name of firm or employer, if any)

4

CONTRIBUTIONS

SCHEDULE H.

St. Leo's Roman Catholic Church, Ashley	$215.00	
St. Leo's Sisters, Ashley	45.00	
Community Welfare Federation	150.00	
Wilkes-Barre City Hospital	62.50	
Other hospitals, Wilkes-Barre	10.00	
Malvern, Philadelphia	90.00	
Other Catholic Churches	175.00	
St. Stanislaus Orphanage	71.08	
Soldiers' organizations	19.75	
Christmas Basket	15.37	
St. Casimer's Church, Plymouth	25.00	
Jewish Church	5.00	
Protestant Church	7.50	
W. M. C. A.	5.00	
Policeman's & Firemen's Fund	7.00	
Other Charities	117.00	
Catholic Hour	5.00	$1,026.12

TAXES

Personal Property Tax	54.23	
Personal Taxes	158.51	
Gasoline Tax	60.00	
Movie Tax	5.20	
Liquor Tax	50.00	
Tobacco Tax	14.60	
Shows' Tax	5.60	346.14

SCHEDULE D. - ITEM 16.

Rent	$ 600.00	
Telephone & Tolls	166.87	
Other Office Expenses, Water & Light, Etc.	112.41	
Dues	50.58	
Depreciation Books & Furniture	241.00	
Depreciation on Auto	212.70	
Books & Pamphlets	35.00	
Gasoline & Oil	196.07	
Parking	35.35	1,655.98

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Respondent's Exhibit A

FINDINGS OF FACT AND OPINION.

DOCKET No. 109104. Promulgated March 10, 1943.

Petitioner was appointed judge to fill an unexpired term. At the ensuing primary and general elections he ran for election to a full term. He expended certain amounts in his own behalf and he also contributed funds to a political committee. The other candidates also contributed the amounts specified by the committee. *Held*, petitioner is not entitled to a deduction under section 23 (a) (1) (A) or (a) (2), as amended, or section 23 (e) (2) of the Internal Revenue Code.

Frederick E. S. Morrison, Esq., and *John W. Bodine, Esq.*, for the petitioner.

Myron W. Winer, Esq., for the respondent.

The Commissioner determined a deficiency of $2,506.77 for the taxable year ended December 31, 1939. The sole adjustment contested by petitioner is the disallowance of a deduction of $13,017.27 which petitioner expended as "re-election expenses."

FINDINGS OF FACT.

The petitioner is an individual residing at 6 Brown Street, Ashley, Pennsylvania. He filed his individual income tax return for the calendar year 1939 with the collector of internal revenue for the twelfth district of Pennsylvania. Petitioner kept his books on the cash receipts and disbursements basis, and his return for the taxable year 1939 was so prepared.

Petitioner is a lawyer, admitted to the bar of the State of Pennsylvania. He was appointed by the Governor of Pennsylvania to fill an unexpired term as a judge of the Court of Common Pleas for the Eleventh Judicial District of Pennsylvania, which district is co-extensive with Luzerne

County. The compensation paid to petitioner as judge was $12,000 per year. At the time of his appointment, petitioner agreed to be a candidate for the full 10-year term beginning January 1, 1940. He was a candidate to succeed himself in both the primary and the general elections of 1939. He was defeated in the general election.

In order to get the support of the Democratic organization of Luzerne County, petitioner had to pay the amount "assessed" by the subcommittee of the Democratic Party. Each of the candidates gave the treasurer authority to spend his contribution. The expenditures from the fund were principally on behalf of all the candidates. In addition to such contributions made by petitioner in the amount of $8,000, he expended on his own behalf $5,017.27 for advertising, traveling, and other expenses in connection with his campaign. He received a contribution of $500 from his son for the purpose of defraying part of his campaign expenditures.

All facts stipulated but not expressly found herein are incorporated by reference.

OPINION

HILL, *Judge:* The sole issue of this proceeding is whether or not petitioner is entitled to a deduction for his "re-election expenses," either as a business expense, as a loss suffered in a transaction entered into for profit, or as a nontrade or nonbusiness expense.

The Commissioner denied the deduction claimed in petitioner's return as a business expense on the ground that it was not an ordinary and necessary expense of carrying on a trade or business. On brief, he contends that it is not deductible under any of the sections relied upon by petitioner.

Petitioner first contends that he was a judge and was running for re-election. Thus, he contends that he was carrying on a trade or business of being a judge and he should be allowed his "re-election expenses" as an expense of that

trade or business. He seeks to distinguish his case from *David A. Reed*, 13 B. T. A. 513; reversed on another issue, 34 Fed. (2d) 263, which in turn was reversed *sub nom. Lucas v. Reed*, 281 U. S. 699.

However, the mere fact that petitioner was already an office holder and was running for re-election in no wise distinguishes the instant case from the *Reed* case, *supra*. The expenses incurred had nothing whatever to do with the performance of petitioner's functions as a judge. "Running for office of and within itself is not a business carried on for the purpose of a livelihood or profit, but is only preparatory to the actual deriving of income from a subsequent holding of the office, if elected." *David A. Reed, supra*, 524. See *Charles H. McGlue*, 45 B. T. A. 761, 769. Petitioner is not entitled to a deduction by virtue of section 23 (a) (1) (A), Internal Revenue Code, as amended.

Petitioner's next contention is equally without merit. He did not suffer a loss in a transaction entered into for profit so that he would be entitled to a deduction under section 23 (e) (2). He spent the money to help win the election. If he had so won, he would have been a judge for a term of 10 years at the fixed annual salary. The salary was not paid to the judge for the winning of the election, but rather for the performance of the judicial functions of a judge. No profit could inure to petitioner merely from winning the election; therefore it was not a "transaction entered into for profit."

The last question to be decided is whether or not petitioner is entitled to a deduction for the amount of his campaign expenses as a nontrade or nonbusiness expenditure under section 23 (a) (2), *supra*, as amended by section 121 (a) of the Revenue Act of 1942. We say not.

Our holding that petitioner was not engaged in a trade or business would not deny him the benefit of a deduction for expenses "paid • • • for the production or collection of income or for the management, conservation or maintenance of property held for the production of income."

However, we have no doubt that it was not within the intendment of Congress to allow such expenses to be deducted under this section. See House Ways and Means Committee Report on Revenue Bill of 1942 at pages 74-76, and Senate Finance Committee Report at pages 87-88. Also of interest is the statement of Mr. Paul set forth at page 88 of volume 1 of the Hearings before the Ways and Means Committee. The expenditures upon which petitioner bases his claim for a deduction under this section are personal in nature. See *George W. Lindsay*, 34 B. T. A. 840. See also T. D. 5196, Internal Revenue Bulletin Dec. 14, 1942.

Furthermore, the concept that the holding not only of a high judicial office but of any public office constitutes a trade or business or a transaction entered into for profit is a contradiction of the basic ideology underlying the principles of our government. Equally under the ban of public conscience and, hence, of public policy is the contention that expenditures made to promote one's candidacy for election to public office represent expenses "paid * * * for the production or collection of income, or for the management, conservation or maintenance of property held for the production of income."

We hold that Congress did not intend that expenditures of the character here involved should be deductible.

Decision will be entered for respondent.

DECISION.

Pursuant to the determination of the Court, as set forth in its findings of fact and opinion promulgated March 10, 1943, it is

ORDERED AND DECREED: That there is a deficiency in income tax for the calendar year 1939 in the amount of $2,506.77.

(Signed) JOHN W. KERN,
Judge.

PETITION FOR REVIEW BEFORE THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

(Filed April 5, 1943.)

The petitioner, MICHAEL F. MCDONALD, hereby petitions for a review by the Circuit Court of Appeals for the Third Circuit of the decision of the Tax Court of the United States in the above matter entered on March 10, 1943. The taxable period involved is the calendar year 1939. Petitioner's 1939 income tax return was filed by the petitioner in the Office of the Collector of Internal Revenue for the 12th Collection District of Pennsylvania, at Scranton, Pa.

FREDERICK E. S. MORRISON,
1429 Walnut Street,
Philadelphia, Pa.,
Counsel for Petitioner.

Dated: April 2, 1943.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

And afterwards, to wit, the 19th day of October, 1943, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones, Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 9th day of December, 1943, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION TO REVIEW THE DECISION OF THE TAX COURT OF THE UNITED STATES.

OPINION.

(Filed December 9, 1943.)

Before JONES, GOODRICH and McLAUGHLIN, *Circuit Judges.*

McLAUGHLIN, *Circuit Judge:*

The petitioner here seeks to deduct, from his 1939 taxable income, the lawful expenses for his campaign for election to public office. During said campaign he was the incumbent of the particular position by reason of an ad interim appointment. The United States Court of Tax Appeals disallowed the deduction. The matter is here on petition for review of that decision.

On his behalf it is urged in the alternative: that such deduction is allowable as ordinary and necessary expenses incurred in his trade or business; or as a loss on a transaction entered into for profit; or as ordinary and necessary expenses incurred for the production or collection of income.

The expenses here were strictly in compliance with the state statute and legitimate in their entirety. The office

sought by the petitioner carried a ten year term. Such a period embraces a substantial picture of permanency. It might well represent the future availability of such aspirant for the particular position. We do not see that petitioner's age has been stated in the testimony but it does appear that in 1939 he had been practicing law thirty-five years. In any event, the objective of the expenditures was to obtain a considerable amount of money, over at least a decade of years. Under the decisions, an outlay of this sort is in the nature of a capital item. As such, it is not deductible under any of the arguments of the petitioner. This particular type of case is a matter of first impression in the Circuit Court of Appeals but the principle involved has been passed on in this Circuit in Clark Thread Co. v. Commissioner, 100 F. (2d) 257. There the petitioner had paid over a sum of money to a competitor, in consideration of the latter abstaining from the use of the name Clark on its products. The amount paid was set out as a deduction for the particular year. The Court held that it was a capital expenditure, with derived benefits enuring to the Clark Company over a period of many years. It said on page 258:

"The benefits derived from this right cannot be confined to the year in which it was acquired and therefore the cost of acquiring it cannot be charged against income earned in that year."

To much the same effect is another decision of this Circuit in Newspaper Printing Co. v. Commissioner, 56 F. (2d) 125.

The petitioner urges that his campaign expenses are deductible from gross income as coming within the language of Section 23, (a) (1) of the Internal Revenue Code reading: "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *." It is not disputed that this language as it is construed, (for example, Higgins v. Commissioner, 312 U. S., 212) means that the expenses must be directly connected with the carrying on of the taxpayer's business,

in order to be deductible. But the petitioner contends, that is just the situation, namely, that the campaign for election was part of the taxpayer's business. The public office, petitioner was holding by appointment, was that of county judge. In 1939 he was running for election to that position. His campaign expenses are the claimed deduction. These were all incurred prior to the election itself. They involved the usual type of such disbursements. None of them had the slightest relationship to the functioning of the judicial office. Two cases in the then Board of Tax Appeals are quite similar to the instant one. In the first, Reed v. Commissioner, 13 BTA, 513 (reversed on another issue, 34 F. (2d), 263 (CCA 3rd), reversed 281 U. S., 699) a candidate for the United States Senate, attempted to deduct his campaign expenses. The Board held; that running for office is not a business carried on for the purpose of a livelihood but only preparation for the actual deriving of income from a subsequent holding of the office if elected. The petitioner attempts to distinguish that case from the one at bar. He says that the taxpayer in the Reed matter was not in the office at the time he campaigned for it; whereas the present petitioner was actually the incumbent. We do not see any important difference in the two sets of facts. Both candidates were running for offices whose terms commenced in the future. The expenses in each case had solely to do with the desired future period of the particular position.

The second Tax Appeals decision is Linsay v. Commissioner, 34 BTA, 840. There, a Congressman endeavored to deduct the expenses of trips to his home city. The trips were for the purpose of keeping in touch with his constituents. The deduction was refused, under the authority of the Reed case. The Board held that such an item was in the nature of campaign expense and unconnected with the functions of the office of Congressman. In that case there was a stipulation between the parties that maintenance of contacts with his constituents was necessary to Linsay's reelection.

The second of petitioner's alternative arguments is under Section 23 (e) (2) of the Internal Revenue Code. That allows as a deduction, by an individual, losses sustained during the taxable year "if incurred in any transaction entered into for profit, though not connected with the trade or business."

In Dresser v. United States, 55 F. (2d), 449 (C. Cls.) certiorari denied, 287 U. S., 635, the Court said at page 510:

"A loss in order to be deductible under the statute must be an unintentional parting with something of value."

In Guirlani & Bro. v. Commissioner, 119 F. (2d) 852 (CCA 9th) at page 857 the opinion reads:

"We reiterate, the parting with the money by the taxpayer here was deliberate and intentional according to the testimony introduced by it."

And on the same page:

"Failure to realize a desired profit is not of itself a loss. If this taxpayer did not make the expenditure, there would be no loss, for all that would happen would be failure to show a desired profit."

Here, petitioner made his contribution of his own free will, in order to obtain the support of his political party in both the primary and general election campaign. He received such support. In addition, and more or less in connection therewith, his money paid for advertising, clerical assistance, transportation and other necessary campaign disbursements. Personally, politically and professionally, he had the benefit of the publicity. When he arranged for his party's backing he had no guarantee of election. Of necessity, he knew that he might be defeated. In reality, he made his party contribution in order that he might be its candidate, and facing the unescapable fact that he could lose out at the election. Fairly, he received what he paid for. Unhappily for him, it did not result in victory and, therefore, continuance in his position. Certainly, his money disbursements were not the involuntary parting with something of value contemplated by the statute as constituting a deductible loss.

Petitioner's last point is under Section 121 (a) of the Revenue Act of 1942 which added to Section 23 (a) of the Internal Revenue Code the following:

"(2) Non-Trade or Non-Business Expenses.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

This amendment came about as the result of the decision of the United States Supreme Court in Higgins v. Commissioner, 312 U. S., 212. In that case a claimed deduction under Section 23 (a) (1), for the expense of managing the taxpayer's investments, was denied. The Court held that such management did not constitute a "trade or business." Since non-trade and non-business income was taxable, steps were taken to include in the Code an amendment allowing deduction of expense in connection therewith. The retroactive 1942 amendment followed. The regulation accompanying the amendment specifically excludes such a deduction as here asserted. That regulation in Section 19.23 (a)-15 (as added to by T.D. 5196 1942-2 Cum. Bull. 96).

(b) • • •

"Among expenditures not allowable under 23(a)(2) are the following: • • •

Campaign expenses of a candidate for public office."

Section 23 (a) (2) forthrightly corrected unfair situations of the Higgins type where taxes were being paid on non-business income with no deduction allowed for expenses in connection therewith. But that section has no application to the instant facts. Prior to that amendment, petitioner's salary, as a public official, was business income. From this, ordinary and necessary business expense was deductible. Had petitioner been elected in 1939, that same pattern would have continued.

The decision of the Tax Court is affirmed.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Present: JONES, GOODRICH and MCLAUGHLIN, *Circuit Judges.*

Appeal from the Tax Court of the United States. This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court of the United States in this cause be, and the same is hereby affirmed.

By THE COURT,

GERALD MCLAUGHLIN,
Circuit Judge.

December 9, 1943.

Endorsements—

Order Affirming Decision of the U. S. Tax Court
Received and Filed
December 9, 1943
William P. Rowland, Clerk.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*
THIRD JUDICIAL CIRCUIT,

I, WILLIAM P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Appendix to Petitioner's Brief, as constituting the portions of the record before this court at argument; and proceedings in this court in the case of Michael F. M Donald v. Commissioner of Internal Revenue, No. 8361, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 8th day of
(Seal) February in the year of our Lord one thousand nine hundred and forty-four, and of the Independence of the United States the one hundred and sixty-eighth.

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 10, 1944.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

October Term, 1943.

No. [illegible]. 36

MICHAEL F. McDONALD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FREDERICK E. S. MORRISON,
JOHN W. BODINE,
1429 Walnut Street,
Philadelphia, Pa.,
For Petitioner.

International, 236 Chestnut St., Phila. 6, Pa.

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CASES CITED.

STATUTES CITED.

MISCELLANEOUS.

IN THE

Supreme Court of the United States.

October Term, 1943.

No. ____

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Michael F. McDonald, prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Third Circuit, which affirmed the decision of the Tax Court sustaining the respondent in denying to petitioner the deduction from his 1939 taxable income of the lawful expenses paid in that year by him in his campaign for election to continue to hold his public office.

Opinions Below.

The opinion of the Circuit Court of Appeals (R. 122a) is reported at 139 F. (2d) 400. The opinion of the Tax Court (R. 115a) is reported in 1 T. C. 738.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, U. S. C. Title 28, section 347) and Section 1141 (a) of the Internal Revenue Code. The judgment of the United States Circuit Court of Appeals to be reviewed was entered on December 9, 1943 (No. 8361, October Term 1943).

Questions Presented.

1. Where petitioner was appointed a judge of a Pennsylvania county court in 1938 on condition that he would campaign for election in 1939, for a full term, and he did so campaign and was defeated, may he deduct from his 1939 taxable income the lawful expenses of his campaign, as

(a) ordinary and necessary expenses incurred in his trade or business, or as

(b) ordinary and necessary expenses incurred for the production or collection of income, or as

(c) a loss on a transaction entered into for profit?

2. Did the Tax Court err in excluding evidence as to whether the expenses in issue were ordinary and necessary, and in making inadequate findings of fact?

Statutes Involved.

The pertinent provisions of the Internal Revenue Code and of the Treasury Department Regulations are set forth in the appendix, as are the pertinent provisions of the Pennsylvania Election Code.

Statement.

Petitioner, who had been a practicing lawyer in Luzerne County, Pennsylvania, since 1904, was appointed on December 1, 1938, by the Governor of Pennsylvania to

fill the unexpired term of Common Pleas Judge of Luzerne County. Under Pennsylvania law, appointees to Common Pleas Courts must stand for election at the next primary and general elections, if they wish to continue in office.

The term for which petitioner was appointed accordingly expired December 31, 1939, and it was a condition of the Governor's appointment of petitioner thereto that he would be a candidate for the succeeding full term of ten years, beginning on January 1, 1940. His compensation as judge was $12,000. per annum, and this could not be reduced during his term of office.

Petitioner was a candidate at the primary election of September 12, 1939, and at the general election of November 7, 1939. He was opposed at both elections. He was successful at the primary election, but was defeated at the general election.

In order to obtain the support of the Democratic County Committee for his candidacy at each election, petitioner was obliged to pay and did pay out of his own funds assessments toward the expenses of the Committee, fixed by its Executive Committee, in the amount of $8,000. In addition, he incurred and paid other necessary expenses for printing, advertising, postage, traveling expenses, etc., directly in connection with and for the purpose of furthering his nomination and election, in the sum of $5,017.20. These two sums, aggregating $13,017.20, he claimed in his Federal income tax return for the year 1939 (filed March 15, 1940) as a deduction for "re-election expenses" incurred in his campaign for election to retain his office as Judge of the Common Pleas Court of Luzerne County. Petitioner's books are regularly kept on the cash receipts and disbursement basis and were so kept in 1939 and 1940, and his 1939 income tax return was prepared on that basis.

As stated by the Circuit Court of Appeals in this case, "The expenses here were strictly in compliance with the state statute and legitimate in their entirety. . . . The objective of the expenditures was to obtain a considerable amount of money over at least a decade of years."

The party committee, to which petitioner paid the $8,000. mentioned above, was set up and maintained in accordance with the Pennsylvania Election Code, and the Tax Court found as a fact that Petitioner's payment of the Committee's assessment was essential to his securing the nomination and the support of the party organization. The testimony showed without contradiction that Petitioner had no voice or control whatever in fixing the amount of the assessment, which, with that similarly exacted by the Committee and paid by the nine other Democratic candidates running for office (including another Common Pleas Judge running for another vacancy), was fixed on the basis of the total prospective salaries to be received. Petitioner's prospective salary was $12,000. per year for the ten-year period. The sums so assessed were used by the Committee to defray expenses of postage, advertising, meetings, clerk hire, etc., in connection with the expenses of all the candidates.

During the period that petitioner served as Judge, including the period of the campaign, he did not practice law or engage in any business or profession other than that of performing his duties as Judge, nor would Pennsylvania law have permitted him to do otherwise. Such campaigning as petitioner did personally was proper and did not interfere with the performance of his judicial duties. There was no contention by the Circuit Court of Appeals that Petitioner's campaign expenses were not reasonable in amount, or that they were not ordinary and necessary for the attainment of Petitioner's object—the retention of his public office.

Petitioner paid the 1939 Federal income tax, shown to be due by his return, of $1,018.02. Respondent claimed $2,506.77 additional on the ground that petitioner's deduction for election expenses was unauthorized by the tax law. Respondent's claim was sustained by the Tax Court and by the Circuit Court of Appeals, which action petitioner now asks this Court to review.

Specification of Errors to Be Urged.

The Circuit Court of Appeals erred:

1. In holding that the expenditures in question were not ordinary and necessary expenses incurred in petitioner's trade or business.

2. In holding that said expenditures were not ordinary and necessary expenses incurred for the production or collection of income.

3. In holding that in paying said expenditures, petitioner did not sustain a loss on a transaction entered into by petitioner for profit.

4. In failing to hold that the Tax Court erred in excluding evidence as to whether the expenses in issue were ordinary and necessary, and in making inadequate findings of fact.

Reasons for Granting the Writ.

1. This Case Raises an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

The payment by candidates for election to State and Federal office of the legitimate expenses of their campaigns has been customary for many years over the entire country and is inherent in our system of electing public officeholders. Since the Public Salary Tax Act of 1939 has rendered State salaries subject to the federal income tax and since the recent steep increases in federal tax rates, the question whether candidates may deduct their legitimate campaign expenses from taxable income has assumed great importance, not only to the candidates themselves but also to the operation of our democratic system. The matter has been passed upon by the Courts (apart from the instant case) in only two cases in the Board of Tax Appeals, and never by any Circuit Court of Appeals or by this Court.

2. The Errors and Confusion Which May Result From the Opinion Below.

In disallowing the expenses in issue as ordinary and necessary business expenses, the Court below characterizes them vaguely as "in the nature of a capital item," but refused a deduction when the so-called "capital" disappeared through petitioner's defeat at the polls. In disallowing the expenses in issue as a loss, the Court limits allowable losses to "the involuntary parting with something of value", thus casting doubt upon the traditional deductions for worthless stock, losses in development of new processes, losses in exploring for natural resources, losses incurred in negotiating new contracts, and so on. In disallowing the expenses in issue as non-business expenses, the Court below rigidly limits Section 23 (a) (2) of the Internal Revenue Code to cases of expenses paid in connection with income from investment property, such as those in *Higgins v. Commissioner*, 312 U. S. 212, thus disregarding the clear provision of the Amendment to the Code that expenses are deductible if paid "for the production or collection of *income*," regardless of whether or not that income is from property. All of these erroneous holdings of the Court below, unless corrected by this Court, promise as precedents to spread error and confusion in the tax law far beyond the limits of the facts in the instant case.

3. The Injustice to the Petitioner.

The petitioner has been denied a deduction for expenses which he was required to pay in order to retain his sole source of livelihood. The expenses were entirely legal, were customary in petitioner's situation, and were unavoidable if he was to retain his office. The tax is on net income; and if petitioner is to be taxed on the compensation received, fairness and equal treatment require that he be allowed to deduct his expenses. If they were capital payments, they should, nevertheless, be allowed in the year

when paid, since he was defeated in that year and was thus finally deprived of the future return which he contemplated when making them. The decision below not only unsettles established tax principles, but also works a grave injustice on the petitioner.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Third Circuit, sitting at Philadelphia, Pennsylvania, commanding that Court to certify and to send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case numbered and entitled on its docket 8361, to the end that this case may be reviewed and determined by this Court; that the said judgment of the United States Circuit Court of Appeals for the Third Circuit may be reversed by this Court; and that your petitioner may have such other and further relief in the premises as may seem just and proper.

And your petitioner will ever pray, etc.

MICHAEL F. McDONALD,
Petitioner.

FREDERICK E. S. MORRISON,
1429 Walnut Street,
Philadelphia, Pa.,
Attorney for Petitioner.

DRINKER, BIDDLE & REATH,
Of Counsel.

BRIEF IN SUPPORT OF THE PETITION.

This case raises for the first time an issue of very considerable public importance, namely, whether one who holds a state office, and who seeks nomination and election to succeed himself, may deduct from his taxable income the legitimate expenses of his campaign, permitted by the Election Code of that State, where he has duly reported and made public record of all his expenses in accordance with the State law.

Section 23 (a) (1) of the Internal Revenue Code provides for the deduction by an individual from gross income of "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . ." Section 121 (a) of the Revenue Act of 1942 added to section 23 (a) of the Code (with retroactive effect to the instant case) a provision for the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income . . ." Section 23 (e) (2) of the Code provides for the deduction of *losses* "if incurred in any transaction entered into for profit, though not connected with the trade or business . . ."

The particular question is presented, it is believed, to this Court for the first time in the present case. This is not surprising, since the salaries of state officers have been subject to Federal income tax only since the Public Salary Tax Act of 1939. The question involves all of the officers seeking election to succeed themselves in states where ordinary and necessary campaign expenses have statutory recognition as a legitimate factor in the function of the democratic process. The high rates of income tax now applicable to individuals give this case far-reaching effects upon the

central machinery of our democracy—the system by which we focus the attention of the electorate upon the issues and personalities involved in an election. This case is accordingly believed to be not only a case of first impression, but also of unusual significance.

The Court below agreed that the petitioner's business in 1939 was that of occupying the office and performing the duties of a Common Pleas Judge. (Indeed, if it had held otherwise, the expenses in question would have been deductible as non-business expenses. Opinion below, R. 126a). Being a judge was the only business in which, during the taxable year, petitioner was engaged or could lawfully be engaged. A system of government which is sufficiently realistic to attract a person to public office by compensating him financially must certainly accept the necessary consequence, namely, that the official so compensated will make his office his source of livelihood and therefore inescapably will make his office his business. A judicial office is undoubtedly a position of high public trust, but it is none the less a business for tax purposes.

The Court below did not deny that the expenses in issue were ordinary and necessary. Since legally and actually petitioner's "business" was that of a judge, the amounts paid to retain that office were an expense in carrying on such business, just as much as would be the expense of insurance by a corporation of its property or of its profits against a loss by fire. That the expenses were necessary is clear. What is an "ordinary" expense was defined by this Court in *Welch v. Helvering*, 280 U. S. 111, where the Court said that for expenses to be "ordinary" "does not mean that the payments must be habitual or normal in the sense that the same taxpayer will have to make them often . . . . The situation is unique in the life of the individual affected, but not in the life of the group, the community, of which he is a part." See also *Kornhauser v. U. S.*, 276 U. S. 145, and *Deputy, et al. v. DuPont*, 308 U. S. 488, 495. The Court below held that the outlay

was "in the nature of a capital item." But the mere fact that it may be paid only once in a life time was held by this Court in *Welsh v. Helvering, supra*, to be unimportant, as long as the expense is of common occurrence in the life of the community. Certainly payment of campaign expenses by candidates is sufficiently common to qualify as "ordinary" under this test.

There is believed to be no decision by any Circuit Court of Appeals directly on this question. The two decisions of the Board of Tax Appeals which most closely approach the point are easily distinguishable, and in any case are not binding here. In *David A. Reed*, 13 B. T. A. 513, the Board held that a voluntary contribution by a practicing lawyer to secure the support of the party organization for his nomination as senator was not deductible. That case differed from the case at bar, both in the fact that the contribution was voluntary and not shown to be necessary. In *Lindsay*, 37 B. T. A. 840, the Board held that a Congressman already in office could not deduct the expenses of traveling to his home city to consult with his constituents. There was no evidence that Lindsay was a candidate for re-election, and the Board accordingly could not hold that the travel expenses were necessary to enable him to retain his livelihood. The Board therefore simply followed the *Reed* case, and the situation is thus similarly distinguishable here.

Furthermore, the decisions of the Tax Court and the rulings of the Commissioner uniformly hold that the expense of retaining a source of livelihood are not capital and are deductible. For example, the expense incurred by an actor in training himself to retain the job that he is already performing have been held deductible: *Charles Hutchison*, 13 B. T. A. 1187; *Denny*, 33 B. T. A. 738. The rulings of the Commissioner permit a member of a labor union to deduct from his taxable income not merely his union dues, O. D. 450, (1920) 2 C. B. 105; I. T. 2888, XIV—1 C. B. 54, but also the initiation fee essential to his originally join-

ing the union, I. T. 3684, 1944, I. R. B. No. 1, p. 11. And in *Evans*, Docket No. 89,374, C. C. H. B. T. A. Service, Decision No. 10,620-D, the Tax Court permitted a deduction for amounts spent by an actress, who feared that her contract might not be renewed, in an unsuccessful attempt to negotiate a new contract with another employer—a situation closely analogous to that in the present case.

If, however, it should be considered that the occupation of being a judge is not a business, certainly the payments in question were expenses necessarily incurred for the production of income, since their payment was essential to petitioner's continuance in the office on which his income depended. Being a judge was what produced petitioner's sole income, and unless he had incurred the expenses here involved, he would have lost all chance of having this income continue over the ten years following his election. It is true that section 23 (a) (2), added to the Code by the Revenue Act of 1942, was the result of a Congressional desire to allow the type of deductions disallowed by *Higgins v. Commissioner*, 312 U. S. 212. But the Congressional reports show no intent to limit this amendment to investors' expenses, and the language of the new section itself (Appendix hereto, p. 17) permits the deduction, not only of expenses for the "management, conservation, and maintenance of *property*," but also for any "expenses paid for the production or collection of *income*." There is certainly no doubt that the petitioner incurred the expenses in issue for the production of income. In these circumstances, even if it should be held that the expenses in issue were not deductible under section 23 (a) as it stood before the recent amendment, it is clear that the amendment permits their deduction because of their close connection with the production of the petitioner's income.

Finally, if it held that the expenses in question are neither business nor non-business deductions, they are clearly deductible under section 23 (e) (2) of the Code as a "loss . . . incurred in a transaction entered into for

profit." That the petitioner entered this transaction (that is, ran for re-election) for profit, and that there was no impropriety in his so doing, has been explained above. The Court below disallowed any deduction for a loss on the theory that a loss "must be the involuntary parting with something of value." The Court states that the petitioner "received what he paid for" and therefore did not lose anything.

But this definition of a deductible loss is far from adequate. If a taxpayer buys a share of stock, for example, he undoubtedly gets what he pays for; but this does not prevent him from deducting an allowable loss when that stock becomes worthless. An inventor who hires laboratory assistants, buys materials, and incurs other development expense in testing a proposed product clearly gets the services and materials for which he pays, and yet the entire expense will be deductible as a loss if the proposed invention proves to be a failure. See *Weingarten, Inc.*, 44 B. T. A. 798 (Acq.); *Dresser Mfg. Co.*, 40 B. T. A. 341 (Acq.); *Acme Products Co., Inc.*, 24 B. T. A. 194. A businessman who sends an agent abroad to develop new business undoubtedly receives the services he pays for, but if the venture is unsuccessful, he still may claim the expense as a deductible loss. *Pope*, C. C. H. B. T. A. Service, Dec. No. 12,572-H; I. T. 1505, I-2 C. B. 112. And one who pays to explore a mining or quarrying property gets the exploratory services paid for, but may claim the loss if the materials sought are not found. *Gopher Granite Co.*, 5 B. T. A. 1216; *Parker*, 1 T. C. 709. A taxpayer gets something for every reasonable expenditure, whether it be a capital or expense item, and this does not prevent his deduction of a loss.

The Court below bases its definition of a loss on a quotation from *Dresser v. U. S.*, 55 F. (2d) 499, at p. 510. An examination of this case shows that the taxpayer was seeking a deduction for the cost of stock which was already worthless when he bought it, and this was properly dis-

allowed. The petitioner here, however, was paying his money—certainly "something of value"—with a reasonable chance of success; and his defeat at the polls, which caused his loss, was certainly "unintentional." It is not the expenditure of the taxpayer's money which must be unintentional, but rather the frustration of the purpose for which the money was spent. A taxpayer to whom a loss on worthless stock is allowed intended to pay the purchase price of the stock, but did not intend that expenditure to become fruitless.

The Court below also quotes from *Giurlani & Bro. v. Commissioner*, 119 F. (2d) 852, where the taxpayer paid the debts of its supplier without taking any subrogation or other consideration. The Court disallowed the payment as a loss, since there was no evidence that the payment could have been of any business advantage to the taxpayer (indeed, it seemed likely that the payment was a gift to relatives), and since, if it was of benefit, the benefit could last for an indefinite period. This is far from the instant case, where the financial benefits from success in the election are obvious, and where the loss from defeat was complete in 1939.

The established types of allowable losses were also overlooked by the Court below in its holding that the campaign expenses were not deductible as ordinary and necessary expenses because "in the nature of a capital item." Even the cost of a capital item is deductible if the anticipated profit from its purchase is irretrievably lost, as happened here upon petitioner's defeat at the polls. The Court below relied upon two of its former decisions, where the taxpayer was *successful* in its expenditure, in both cases to suppress competition. If the Court below had quoted further from *Clark Thread Company v. Commissioner*, 100 Federal 2d 257, it would have referred to this passage: "Provision is made in the income tax law for the charging off of such assets over a period of years where their duration is limited." The Board was also of the opin-

ion that the benefits in this case were of indefinite duration and made no allowance for exhaustion." In the instant case, however, any capital asset which the petitioner can be considered to have acquired through the expenditures in issue had no duration whatever after his defeat in the general election. The *Clark* case and the similar case of *Newspaper Printing Company v. Commissioner*, 56 Federal 2d 125, are thus in no sense applicable here.

Petitioner may have gotten the personal services, postage, committee support, and so on for which he paid, but he did not get the profit for which he entered the transaction; and it is when the taxpayer is involuntarily shut out from this profit that the statute grants him a deduction for his expenditures as a loss.

Accordingly, it is respectfully submitted that the present case involves an important question of Federal law, which has not been but should be settled by this Court, and which was decided incorrectly below, and that the petition should be granted.

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Appendix.

STATUTE.

Internal Revenue Code
Section 23 (a). Expenses.—

(1) Trade or business expenses.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity . . .

(2) Non-trade or non-business expenses.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

. . . . . .

(e) Losses by individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business;

REGULATIONS.

Regulations 111.

Section 29.23 (a)—15. Non-trade or non-business expenses.—(a) In General.—Subject to the qualifications and limitations in chapter 1 and particularly in section 24, an expense may be deducted under section 23 (a) (2) only upon the condition that:

(1) it has been paid or incurred by the taxpayer during the taxable year (i) for the production or collection of income which, if and when realized, will be required to be included in income for Federal income tax purposes, or (ii) for the management, conservation, or maintenance of property held for the production of such income; and

(2) it is an ordinary and necessary expense for either or both of the purposes stated in (1) above.

The term "income" for the purpose of section 23 (a) (2) comprehends not merely income of the taxable year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years; and is not confined to recurring income but applies as well to gains from the disposition of property. For example, if defaulted bonds, the interest from which if received would be includible in income, are purchased with the expectation of realizing capital gain on their resale, even though no current yield thereon is anticipated, ordinary and necessary expenses thereafter incurred in connection therewith are deductible. Similarly, ordinary and necessary expenses incurred in the management, conservation or maintenance of a building devoted to rental purposes are deductible notwithstanding that there is actually no income therefrom in the taxable year, and regardless of the manner in which or the purpose for which the property in question was acquired. Expenses incurred in managing, conserving, or maintaining property held for investment may be deductible under this provision even though the property is not currently productive and there is no likeli-

hood that the property will be sold at a profit or will otherwise be productive of income and even though the property is held merely to minimize a loss with respect thereto. The expenses, however, of carrying on transactions, which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses.

Expenses, to be deductible under section 23 (a) (2), must be "ordinary and necessary," which presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of taxable income or to the management, conservation, or maintenance of property held for the production of income.

. . . . . .

Section 29.23 (a)—1. Losses by individuals.—Losses sustained by individual citizens or residents of the United States and not compensated for by insurance or otherwise are fully deductible if (a) incurred in the taxpayer's trade or business, or (b) incurred in any transaction entered into for profit, . . .

In general losses for which an amount may be deducted from gross income must be evidenced by closed and completed transactions, fixed by identifiable events, bona fide and actually sustained during the taxable period for which allowed. Substance and not mere form will govern in determining deductible losses. Full consideration must be given to any salvage value and to any insurance or other compensation received in determining the amount of losses actually sustained.

PENNSYLVANIA ELECTION CODE.

1937 P. L. 1333, 25 P. S. 2600.

Section 1602 (25 P. S. 3222)—Every political committee shall appoint and constantly maintain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members for primary or election expenses; and unless such treasurer is first appointed and thereafter maintained, it shall be unlawful for a political committee or any of its members to collect, receive or disburse money or incur liability for any such purpose. All money collected or received by any political committe, or by any of its members for primary or election expenses, shall be paid over and made to pass through the hands of the treasurer of such committee and shall be disbursed by him; and it shall be unlawful for any political committee, or any of its members, to disburse any money for primary or election expenses, unless such money shall have passed through the hands of the treasurer. 1937, June 3, P. L. 1333, art. XVI, Sec. 1602.

Section 1606 (25 P. S. 3226)—No candidate or treasurer of any political committee shall pay, give or lend or agree to pay, give or lend, directly or indirectly, any money or other valuable thing or incur any liability on account of, or in respect to, any primary or election expenses whatever, except for the following purposes:

First. For printing and traveling expenses, and personal expenses, incident thereto, stationery, advertising, postage, expressage, freight, telegraph, telephone and public messenger service.

Second. For the rental of radio facilities, and amplifier systems.

Third. For political meetings, demonstrations and conventions, and for the pay and transportation of speakers.

Fourth. For the rent, maintenance and furnishing of offices.

Fifth. For the payment of clerks, typewriters, stenographers, janitors and messengers actually employed.

Sixth. For the transportation of electors to and from the polls.

Seventh. For the employment of watchers at primaries and elections to the number and in the amount permitted by this act.

Eighth. For expenses, legal counsel, incurred in good faith in connection with any primary or election. 1937, June 3, P. L. 1333, art. XVI, Sec. 1606.

Section 1607 (25 P. S. 3227)—(a) Every candidate for nomination or election, and every treasurer of a political committee, or person acting as such treasurer, shall, within thirty days after every primary and election at which such candidate was voted for or with which such political committee was concerned, if the amount received or expended or liabilities incurred shall exceed the sum of fifty dollars, file a full, true and detailed account, subscribed and sworn to by him, setting forth each and every sum of money received, contributed or disbursed by him for primary or election expenses, the date of each receipt, contribution and disbursement, the name of the person from whom received or to whom paid, and the specific object or purpose for which the same was disbursed. Such account shall also set forth the unpaid debts and liabilities of any such candidate or committee for primary or election expenses, with the nature and amount of each, and to whom owing. In the case of the treasurer of a political committee, the account shall include any unexpended balance of contributions or other receipts appearing from the last previous account filed by him. In the case of candidates for election who have previously filed accounts of their primary expenses as candidates for nomination, the accounts shall only include receipts, contribu-

tions and disbursements, subsequent to the date of such prior accounts.

(b) If the aggregate receipts or disbursements and liabilities of a candidate or a political committee in connection with any primary or election shall not exceed fifty dollars, the candidate or treasurer of the committee, as the case may be, shall, within thirty days after the primary or election, certify that fact under oath to the officer or board with whom expense accounts are required to be filed, as hereinafter provided: Provided, however, That if a candidate or political committee does not receive any contributions or make any disbursements or incur any liabilities, he or it shall not be required to file any account or to make any affidavit, but such candidate or political committee shall be deemed for all purposes of this act to have filed an expense account showing no receipts, disbursements or liabilities for primary or election expenses.

(c) Every expense account filed under the provisions of this section shall be accompanied by vouchers for all sums expended amounting to ten ($10) dollars or more. It shall be unlawful for any candidate, agent or treasurer to disburse any money received from any anonymous source. 1937, June 3, P. L. 1333, art. XVI, Sec. 1607.

IN THE

Supreme Court of the United States

No. 36. October Term, 1944.

MICHAEL F. McDONALD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

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STATUTES CITED.

IN THE

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No. 36. October Term, 1944.

MICHAEL F. McDONALD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

This case comes before the Court on writ of certiorari issued to review a decree of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

The opinion of The Tax Court of the United States, written by Judge Hill, and not reviewed by the Tax Court, was promulgated March 10, 1943, appears in the Record at pages 115a to 119a, and is reported at 1 T. C. 738. The opinion of the United States Circuit Court of Appeals for the Third Circuit, written by Circuit Judge McLaughlin, was filed December 9, 1943, appears in the Record at pages 122a to 126a, and is reported at 139 F. (2d) 400.

JURISDICTION.

The jurisdiction of this Court to review the judgment of the Circuit Court of Appeals for the Third Circuit on writ of certiorari is provided by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347), and Section 1141 (a)

of the Internal Revenue Code (53 Stat. Part 1, 164, 26 U. S. C. A. Sec. 1141). The judgment of the United States Circuit Court of Appeals was entered on December 9, 1943 (R. 127a). Petition for writ of certiorari was granted by this Court on April 10, 1944 (R. 128a).

QUESTIONS PRESENTED.

1. Where petitioner was appointed a judge of a Pennsylvania county court in 1938 on condition that he would campaign for election in 1939, for a full term, and he did so campaign and was defeated, may he deduct from his 1939 taxable income the lawful expenses of his campaign, as

   (a) ordinary and necessary expenses incurred in his trade or business, or as

   (b) ordinary and necessary expenses incurred for the production or collection of income, or as

   (c) a loss incurred in a transaction entered into for profit?

2. If, on the Tax Court's findings of fact, this Court cannot hold that the expenses are deductible, did the Tax Court err in making inadequate findings of fact from the evidence admitted, or did the Tax Court err in excluding the additional evidence, offered on behalf of the petitioner, showing that the expenses were ordinary and necessary?

STATUTES INVOLVED.

The pertinent provisions of the Internal Revenue Code and of the Treasury Department Regulations are set forth in the appendix, as are the pertinent provisions of the Pennsylvania Election Code.

STATEMENT OF THE CASE.

Petitioner, who had been a practicing lawyer in Luzerne County, Pennsylvania, since 1904, was appointed on December 1, 1938, by Governor Earle of Pennsylvania to fill the unexpired term of a Common Pleas Judge of Luzerne

County (R. 28a). Under Pennsylvania law, appointees to Common Pleas Courts must stand for election at the next primary and general elections, if they wish to continue in office (R. 29a). The term for which petitioner was appointed accordingly expired December 31, 1939, and it was a condition of the Governor's appointment of petitioner thereto that he would be a candidate on the Democratic ticket for the succeeding full term of ten years, beginning on January 1, 1940 (R. 36a). His compensation as judge was $12,000. per annum (R. 29a), and under the Pennsylvania Constitution this could not be reduced during his term of office. *Bailey v. Waters*, 308 Pa. 309.

In accordance with the condition attached to his appointment, petitioner was a *bona fide* candidate at the primary election [1] of September 12, 1939, and at the general election of November 7, 1939. He was opposed at both elections. He was successful at the primary election, but was defeated at the general election (R. 29a).

In order to obtain, for his candidacy at each election, the support of the County Committee of the political party which was his sponsor, petitioner was obliged to pay and did pay out of his own funds in 1939 assessments toward the campaign expenses of the Committee, fixed by its Executive Committee, in the amount of $8,000. (R. 29a, 30a, 36a, 37a, 49a, 69a, 70a). The assessment for the primary campaign was paid to the Primary Campaign Committee, and that for the general election to the County Committee itself, through their respective treasurers (R. 28a, 29a). In addition, he incurred and paid in 1939 out of his own funds other necessary expenses, directly in connection with and for the purpose of furthering his nomination and elec-

[1] All elective public officers in Pennsylvania (except Presidential electors) must first be nominated at a direct primary election, at which the voters of each political party select, in a manner provided by the Election Code, the nominees of their respective parties. Sec. 902, Pennsylvania Election Code, 1937 P. L. 1333; 25 Purdon's Statutes, Sec. 2862.

tion, in the sum of $5,017.20 (R. 30a). These two sums, aggregating $13,017.20, he claimed in his Federal income tax return for the year 1939 as a deduction for "re-election expenses" incurred in his campaign for election to retain his office as Judge of the Common Pleas Court of Luzerne County (Respondent's Exhibit A, R. 105a). Petitioner's books are regularly kept on the cash receipts and disbursement basis and were so kept in 1939, and his 1939 income tax return was prepared on that basis (R. 28a).

As stated by the Circuit Court of Appeals in this case, "The expenses here were strictly in compliance with the state statute and legitimate in their entirety . . . The objective of the expenditures was to obtain a considerable amount of money over at least a decade of years." (R. 122a, 123a).

The party committees, to which petitioner paid the $8,000. mentioned above, were set up and maintained in accordance with the Pennsylvaina Election Code,[2] and the Tax Court found as a fact that Petitioner's payment of the committees' assessments was essential to his securing the nomination and the support of the party organization (R. 116a). The testimony showed without contradiction that Petitioner had no voice or control whatever in fixing the amount of the assessments, which, with those similarly exacted by the committees and paid by the nine other candidates sponsored by the same political party running for office (including another Common Pleas Judge running for another vacancy), was fixed on the basis of the total prospective salaries to be received (R. 36a-38a, 49a, 50a, 61a-65a, 68a-70a). Petitioner's prospective salary was $12,000. per year for the ten-year period.[3] The sums so assessed

[2] Extracts from the Pennsylvania Election Code are set out in the Appendix, p. 36, *infra*.

[3] The ten-year term is fixed by the Pennsylvania Constitution, Article 5, Section 15. The salary is fixed by the Act of May 16, 1929, P. L. 1780, Sec. 4; 17 Purdon's Statutes 834.

against the petitioner and his fellow candidates were used by the committees to defray expenses of postage, advertising, meetings, clerk hire, and other similar items, in connection with the election campaign of all the candidates (R. 47a, 60a-65a, 69a-72a; Exhibits 2 and 3, R. 79a-103a).

During the period that petitioner served as Judge, including the period of the campaign, he did not practice law or engage in any business or profession other than that of performing his duties as Judge and campaigning for election to retain that office, nor would Pennsylvania law have permitted him to practice law or engage in any other business (R. 41a, 45a). Such campaigning as petitioner did personally was proper and did not interfere with the performance of his judicial duties (R. 38a). There was no finding by the Tax Court or by the Circuit Court of Appeals that Petitioner's campaign expenses were not reasonable in amount, or that they were not ordinary and necessary for the attainment of Petitioner's object the retention of his public office.

Petitioner paid the 1939 Federal income tax, shown to be due by his return, of $1,018.02 (R. 28a). Respondent claimed $2,506.77 additional on the ground that petitioner's deduction for election expenses was unauthorized by the tax law. Respondent's claim was sustained by the Tax Court and by the Circuit Court of Appeals, which action petitioner now asks this Court to reverse.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred in failing to hold;

1. That the expenditures in question were ordinary and necessary expenses incurred in petitioner's trade or business, and therefore were deductibe under Section 23 (a) (1) (A) of the Internal Revenue Code, or

2. That said expenditures were ordinary and necessary expenses incurred for the production or collection of income, and therefore were deductible under Section 23 (a) (2) of the Internal Revenue Code, or

3. That upon petitioner's failure to retain his office, he sustained a loss in the amount of said expenditures, in a transaction entered into for profit, which loss was deductible under Section 23 (e) (2) of the Internal Revenue Code, or

4. That the Tax Court erred in excluding evidence as to whether the expenses in issue were ordinary and necessary, and in making inadequate findings of fact.

SUMMARY OF ARGUMENT.

This is an important case, dealing for the first time with a problem common to holders of elective office in many parts of the United States, where campaign expenses are a legitimate factor in the process of electing public officers. In view of the necessarily high rates of income tax at present, and their probable continuance for some time to come, unless such expenses are allowable as income tax deductions, many persons lacking substantial financial means, but otherwise duly qualified to run for office, cannot afford to do so.

The campaign expenses in issue in this case were recognized by the law of Pennsylvania as usual and proper, and, looked at realistically as instances of the practical matters with which the Federal law of taxation on "net" income deals, they were either

(1) ordinary and necessary expenses incurred in the petitioner's trade or business, or

(2) ordinary and necessary expenses incurred for the production of income, or

(3) a loss incurred in a transaction entered into for profit.

On any of these grounds they should be allowed as deductions. And if, on the Tax Court's findings of fact, this Court cannot hold that the expenses are deductible, the case should be remanded, for more adequate findings of fact, or to permit the taking of testimony erroneously excluded, or both.

ARGUMENT.

1. The Question Whether Legitimate Campaign Expenses Are Deductible From the Taxable Income of the Candidate Incurring Them Is One of Great Public Importance.

This case raises, for the first time, an issue of national importance to our citizens in connection with the selection from among them of the best available talent to serve and conduct our democratic government, local, state and federal. The issue is whether one holding elective public office—in this case a state office—and in good faith seeking to continue in office by nomination and election, may deduct, under the clear provisions of the Internal Revenue Code, as ordinary and necessary expenses in computing his net income subject to federal income tax, the legitimate expenses of his election campaigns, where he has fully complied with the laws of his state in incurring only such necessary expenses as are permitted thereby, and where he has duly reported and made public record of all of his expenses in accordance with state law.

The particular question is believed to have been presented to a Circuit Court of Appeals, and to be now presented to this Court, for the first time in this case. The novelty of the case is not surprising, as the salaries of state and local officers have been subject to federal income tax only since the enactment of the Public Salary Tax Act of 1939, and the number of federal elective officers is relatively small. The question involves a large proportion of all the officers seeking election to succeed themselves in states where ordinary and necessary campaign expenses have statutory recognition as a legitimate factor in the functioning of the democratic process. The high rates of income tax applicable to individuals give this case far-reaching effects upon the central machinery of our democracy—the system by which the attention of the electorate is focused upon the issues and personalities involved in an

election. This case is accordingly not only a case of first impression, but also of unusual significance.

An example illustrates the importance of this problem. Assume a person holding an elective public office, which, like the Petitioner's, carries a salary of $12,000. per year, and who has interest payments, taxes, and other non-campaign deductions, credits, and personal exemption totaling $2000., leaving taxable income of $10,000., before deducting campaign expenses. Under the tax law in force in 1944, the top rate of income tax applicable to this income is 37%, and the average rate approximately 30%. If the person seeking that office incurs in good faith expenses for his nomination and election campaigns, the disallowance of a deduction for those expenses will substantially increase his tax burden. Such an increase in tax might not trouble the candidate with large financial means or capital, whether or not invested in tax-exempt securities, since he could afford to finance his campaign and his tax from his substantial capital. But the candidate who has little or no capital, who seeks to continue in public office or for the first time to serve in public office, must pay from his modest public salary both his campaign expenses and the heavy additional tax caused by denying him a deduction for the expenses, and this burden may well be a sufficient deterrent to prevent him from running for office at all.

The Revenue Acts levying income tax were never intended to exercise a selective influence on the type of candidates who could afford to run for public office, nor to penalize the self-sufficient candidate who pays for his own campaign expenses from his earnings, in favor of those who pay their expenses from their substantial financial means.

2. The Expenses Paid by the Petitioner in 1939, in Connection With His Campaign for Nomination and for Election to Retain His Office as Judge of the Court of Common Pleas of Luzerne County, Pennsylvania, Constituted an Allowable Deduction From Petitioner's 1939 Taxable Income as "Ordinary and Necessary Expenses Paid or Incurred During the Taxable Year in Carrying on" the Taxpayer's "Trade or Business," Which, in 1939, Was That of Serving as Judge.

Petitioner's Position Constituted a "Business."

The first question presented under this point is whether Petitioner was carrying on a "trade or business" in 1939 within the terms of Section 23 (a) of the Internal Revenue Code.[4]

Petitioner practiced law in Luzerne County from 1904 until December 1, 1938, when he was appointed by the Governor of Pennsylvania to serve as Common Pleas Judge of that County until December 31, 1939. In accepting this appointment, Petitioner had to agree that he would be a candidate, at the Primary and General elections in 1939, to succeed himself for a full term of ten years from January 1, 1940. Accepting the appointment on these conditions, Petitioner served as judge for his appointive term. He was opposed at both elections in 1939, but such campaigning as was required of him did not interfere with his judicial duties. He won the nomination in the Primary, but was defeated in the General election, and after December 31, 1939, returned to his law practice.

During his tenure of office as judge it would not only have been improper and unprofessional, but also illegal, for the Petitioner to have practiced law.[5] Petitioner's in-

[4] For the text of this section, see the Appendix, at page 33, *infra*.

[5] The canons of judicial ethics, as set forth in the reports of the American Bar Association, volume 60 (1935), condemn the practice of law by a judge and provide that

come tax return for 1939 (R. 105a) shows that the Petitioner was not a man of means or one living on the income from investments, his income from such sources in 1939 being less than $1,800. He did not accept the judgeship, as Respondent orally suggested before the Court below, as a hobby or pastime. On the contrary, he was required by his circumstances to obtain compensation for his public service if he was to support himself and his family. Public officials may properly and should accept compensation for their services, and it must follow, from the fact that such compensation is offered, that candidates for office are expected to be motivated in seeking office, at least in part, by the financial compensation attached to such offices.

The circumstances of this case thus fall readily within the definitions of a trade or business found in the statute and laid down by the courts. Section 48 (d) of the Internal Revenue Code provides unequivocally that "The term 'trade or business' includes the performance of the functions of a public office." The Tax Court, per Judge Hill, has recently held that the office of Associate Justice of the North Carolina Supreme Court is a "business". *Barnhill*, Memorandum Decision, T. C. Docket Nos. 37, 38, unreported, but see C. C. H., T. C. Service Dec. No. 13,967 (M); *Winborne*, Memorandum Decision, T. C. Docket No. 58, unreported, but see C. C. H., T. C. Service Dec. No. 13,981 (M).

A system of government which is sufficiently realistic to attract a person to public office by compensating him financially must certainly accept the necessary consequence, namely, that the official so compensated may make his office his source of livelihood and therefore inescapably will make

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a judge should refrain from accepting any professional employment while in office. The controlling statute in Pennsylvania is the Act of April 14, 1934, P. L. 333, 17 P. S. 1607, which provides that "no judge of any court of this Commonwealth shall practice as attorney or counsellor in any court of justice in this Commonwealth or elsewhere . . . " (Section 75).

his office his business. A judicial office, as any other public office, is undoubtedly a position of high public trust, but none the less for income tax purposes it is a business.

The Expenses in Issue Were "Ordinary and Necessary."

The second question presented is whether petitioner's nomination and election expenses incurred to retain his office as judge were "ordinary and necessary" expenses incurred in his business.

The construction of "ordinary and necessary" has been the subject of numerous decisions which are by no means easy to harmonize. The Courts have not been able to lay down standards, but rather have defined a point of view from which the expenditures in question must be considered. In what has been generally recognized as the leading case on this problem, *Welch v. Helvering*, 290 U. S. 111, Mr. Justice Cardozo, speaking for this Court, pointed out that it is the framework of the community as a whole in which the problem must be examined:

> "What is ordinary, though there must always be a strain of constancy within it, is none the less a variable affected by time and place and circumstance. Ordinary in this context does not mean that the payments must be habitual or normal in the sense that the same taxpayer will have to make them often. A lawsuit affecting the safety of a business may happen once in a lifetime. The counsel fees may be so heavy that repetition is unlikely. None the less, the expense is an ordinary one because we know from experience that payments for such a purpose, whether the amount is large or small, are *the common and accepted means* of defense against attack . . . *The situation is unique in the life of the individual affected, but not in the life of the group, the community*, of which he is a part. At such times there are *norms of conduct* that help to stabilize our judgment, and make it certain and objective. The instance is not erratic, but is brought within a known type . . . The standard set up by the

statute is not a rule of law; it is rather a way of life. *Life in all its fullness* must supply the answer to the riddle." 290 U. S. at pages 113 to 115. (Emphasis supplied.)

It follows that the entire process of electing public officers in our democratic form of government is the necessary frame of reference for this inquiry.

Consider first the specific objective of this Petitioner's campaign expenses. He had been appointed to a judicial office, which the law required him to consider as his only occupation. To retain this means of livelihood he had to campaign to succeed himself and to incur the expenses in issue here—indeed, he accepted the appointment on condition that he would so so. If successful in the campaign, he would continue in a position, not only of great dignity and responsibility in the community, but also of unusual security, with moderate financial reward. Under the Constitution of Pennsylvania, his term of office would run for ten years from January 1, 1940, and his compensation was fixed by statute at $12,000 per year, which could not be reduced without his consent, *Bailey v. Waters*, 308 Pa. 309.

To attain this objective to continue in office, he was required by the governmental system of Pennsylvania to present himself and his record to the electorate in his jurisdiction, and he had to do this with sufficient skill and thoroughness to meet the competition of opponents who, in both the primary and general elections, sought to deprive him of his office. His jurisdiction, Luzerne County, covered a very large area, being about fifty miles long and thirty miles wide, and embraced 210,000 registered voters. Further, these voters were extremely varied in their national and racial origin, so that his personality and record had to be presented to different groups of them in different ways, and even in different languages (R. 42a). In order to present himself and his record to these voters, Petitioner had to travel repeatedly through his constituency, to speak over the radio, to issue printed matter through the mail and in

other ways, and to engage clerks and rent typewriters to make possible its issuance.

Furthermore, like practically every constituency in our democracy, the Petitioner's county was thoroughly organized by both major political parties for election campaign purposes. The party sponsoring the Petitioner's candidacy had a county committee of over eight hundred members, being two from each voting precinct. This committee, in turn, had officers and subcommittees. All of these party workers were concerned with the choice of candidates who would appeal to the electorate as suitable public officers, and with the presentation of these candidates and of the issues of each campaign in the way best calculated to assure the successful election of those candidates. If Petitioner was to follow the ordinary procedure to retain his office, it was essential for him to obtain the support of this party organization.

Petifioner testified without contradiction as to the conditions with which he had to comply in order to cooperate with this organization and to have its support (R. 36a, 37a):

> "Q. What did you have to do in order to get the support of the Democratic party?
>
> A. I was obliged to contribute the assessment to the Democratic organization of Luzerne County made by its executive committee.
>
> Q. Were you consulted as to the amount of the assessment?
>
> A. I was not. The amount of the assessment was indicated to me later on.
>
> Q. Did you have any control over fixing the amount of that assessment?
>
> A. I did not. It was take it or leave it.
>
> Q. Would you have had the support of the Democratic organization if you had not agreed to that assessment?
>
> A. I certainly would not."

Mr. Law, chairman of the county committee of the party sponsoring Petitioner's candidacy, also testified (R.

50a) that if any of the candidates of that party, including Petitioner, had not paid his assessment to the organization, he would not have received the organization's support.

Consider further the evidence in this proceeding showing the common and accepted means adopted by other candidates for attaining their election. The committee of the party in the county, in order to defray the necessary expenditures of the campaign, assessed all the candidates on its slate. These assessments were determined by the executive committee, a sub-committee of the county committee, without consultation with the candidates, but were determined approximately in proportion to the total compensation which would be received by the candidates from their respective offices, if they were elected. Exhibits 2 and 3, (R. 79a-103a), which are the accounts of the treasurers of the primary committee and the county committee, respectively, as filed in accordance with the Pennsylvania Election Code, show that these other candidates, like the Petitioner, paid their assessments to the committees and thus, like the Petitioner, also incurred expense in proportion to the compensation which they would respectively receive. See Table of Assessments, Appendix, p. 39, *infra*.

Furthermore, is it not permissible, especially in view of the breadth of this Court's approach to this question in *Welch v. Helvering*, *supra*, to request the Court to take judicial notice of the regular and lawful practice of candidates for office, both local and national, to incur such expenses in furtherance of their elections? Certainly, in the life of the group of which Petitioner is a part, the norms of conduct involve just such expenses as he incurred and paid. Our system of public elections has involved such expenditures for many years, and the practice has even become so ordinary that statutes have been in force for years in many states to recognize and regulate it.[6]

[6] For example, in 1942, the laws of 46 states (including Pennsylvania) required the filing of a statement of campaign receipts and disbursements, the provisions varying as

The Court below suggested that the outlay was "in the nature of a capital item," apparently on the ground, at least in part, that the outlay might never have to be made again by one of the petitioner's age. But this Court, per Mr. Justice Cardozo, held in *Welch v. Helvering, supra,* that an expense may happen only once in a lifetime and yet may be ordinary and necessary. An election may be unique in the life of the individual affected, but it is not unique in the life of our communities. Thus, in *Kornhauser v. United States*, 276 U. S. 145, counsel fees incurred in defense of a suit for accounting brought against the taxpayer by his former partner, though unusual in the experience of the particular taxpayer, were held to be ordinary and necessary within the meaning of the Revenue Act of 1918, the language of which is identical with that in the material portion of the Internal Revenue Code. This same reply was given by Mr. Justice Douglas in *Deputy et al. v. Du-Pont*, 308 U. S. 488, when he said, speaking for this Court, at page 495, "ordinary has the connotation of normal, usual or customary. To be sure, an expense may be ordinary though it happens but once in the taxpayer's lifetime. Yet the transaction which gives rise to it must be of common or frequent occurrence in the *type of business* involved." (Emphasis supplied.) This test was also applied in *Commissioner v. Heininger*, 320 U. S. 467, where this Court said, "For the respondent to employ a lawyer to defend his business from threatened destruction was 'normal'; it was the response ordinarily to be expected." Any person in any way familiar with public life in the United States

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to whether the statement is required of candidates or parties or both, and whether in the primary or general elections or both; and the laws of 31 states (including Pennsylvania) enumerate the types of expenses which are permissible. See *State and Federal Corrupt Practices Legislation*, Sikes; (Durham, 1928); *Corrupt Practices Legislation*, Rocca, (Washington, 1928); and for a recent summary of all state statutory provisions, *Corrupt Practices Legislation in the 48 States*, Minault, (Chicago, 1942).

must recognize that the payment of campaign expenses by candidates is of frequent occurrence, and is ordinarily to be expected.

The essence of Petitioner's campaign was to attract as much support as possible from the voters in his constituency. He sought to keep his name before them, and to appeal to them to exercise in his favor their voting rights as citizens. This process is similar to the appeal by a business concern to the public to buy war bonds or to take part in salvage drives, the expense of such an appeal to the business concern being deductible if it thereby keeps its name before the public and thereby enhances its standing with them. See I. T. 3564, 1942—2 C. B. 87; I. T. 3581, 1942—2 C. B. 88; and I. T. 3593, 1942—2 C. B. 90.

Furthermore, there are numerous instances where the businessman's appeal to public opinion in a legitimate way, to influence governmental action in his favor or to avert threatened governmental attack, has been held to be ordinary and necessary. For example, in *Los Angeles and Salt Lake Railroad*, 18 B. T. A. 468, the Tax Court allowed a deduction as ordinary and necessary expense for assessments contributed by the taxpayer after the last war to a trade association for advertising addressed to the general public, with the acknowledged object of creating a public opinion favorable toward the railroads. If it is ordinary and necessary for a railroad to contribute an assessment to an association which aims to influence public opinion to further the interests of the associates, why is it not equally ordinary and necessary for a candidate for public office to incur expenses in good faith, including the payment of assessments to a party committee, to build up *bona fide* public support for his candidacy? Additional authority for the deduction of assessments contributed to associations which aimed to influence public opinion is found in *Independent Brewing Company of Pittsburgh*, 4 B. T. A. 870; *California Brewing Association*, 5 B. T. A. 347; and *George Ringler & Co.*, 10 B. T. A. 1134. See also *Lucas v. Wofford*,

49 F. 2d 1027. This analogy between holding public office and engaging in commercial enterprise was recognized by Congress in enacting, in Section 48 (d) of the Code, that a public office is a "business" for income tax purposes.

In his concurring opinion in *Commissioner v. Textile Mills Securities Corp.*, 117 F. 2d 62 (later affirmed, 314 U. S. 326), at page 73, Judge Clark of the Third Circuit Court of Appeals offered several tests to be used in construing the words "ordinary and necessary." He first suggested that these words mean whatever is customary or commonplace—apparently the same test as that used in the *Welch* case, *supra*. He next suggests, by analogy to the law of torts, that those expenses are ordinary and necessary which, in the view of the reasonable business man, are reasonably likely to achieve the object for which the expenses are paid. The expenses in the instant case comply with this standard as well as with that laid down in the *Welch* case, for here the reasonable man would know that expenses to present the Petitioner's record to his constituency would undoubtedly tend toward winning votes for him.

A further test suggested by Judge Clark, and in fact preferred by him, is that the words "ordinary and necessary" should be so construed as best to correlate the work of Congress and the Courts. In the *Textile* case the expenses in question were paid out for lobbying, which has been condemned by the courts as illegal. Judge Clark accordingly held that the expenses were not deductible, since he preferred the view that Congress did not intend to permit deductions for expenses to further illegal acts. Unlike expenses to support a lobby, however, which are vicious because they are secret and color a lobbyist's presentation in a way not known to those before whom he appears, the campaign expenses in the instant case were paid openly, recorded publicly, and recognized as legitimate by the Constitution and laws of Pennsylvania.[7]

[7] The Constitution of Pennsylvania, 1874 P. L. 1, 17, provides an oath of office for all officers, including judges,

It is obvious that no deductions should be allowed for lobbying expenses, or for contributions made secretly to influence a campaign from behind the scenes, in a way not subject to public review. In the instant case, however, the amounts spent, the things for which they were spent, and the ultimate object in view—petitioner's retention of his elective public office—were all matters of public knowledge and were recognized by the public as legitimate. The result is that, adopting this last and preferred test of Judge Clark, these lawful expenses in the instant case are clearly deductible.

It follows, under the tests established by these decisions, that Petitioner's expenses were ordinary and necessary, were incurred in a trade or business, and therefore are deductible.

The Opinion of the Court Below.

In the Circuit Court opinion under review, McLaughlin, J., speaking for the Court, does not oppose Petitioner's contention that the expenses in issue were ordinary and

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which includes the words, ". . . that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election, (or appointment) *except for necessary and proper expenses expressly authorized by law*; . . ." (emphasis supplied). Furthermore, the Act of 1874, P. L. 64, authorized specified types of campaign expenses of a candidate.

The relevant sections of the law now in force, the Election Code of 1937, are set forth in the Appendix hereto for the convenience of the Court. See pp. 36-38, *infra*. The particular expenses in the instant case are set forth in Exhibits 2 and 3 (R. pp. 79a, 89a). They clearly come within the types permitted by the State Election Code, and the record herein shows that all the requirements of the Election Code with respect to reporting these expenses were complied with. In these circumstances there can be no doubt that the expenses in issue were recognized as legitimate by the law of Pennsylvania, and the Circuit Court of Appeals has so held.

necessary. He relies rather on an unreal separation between Petitioner's act of running for election on the one hand and his continuing to perform the functions of his office on the other.[8] This unrealistic division of Petitioner's activities in 1939 into water-tight compartments, as though each had no relation to the other, not only flies in the face of the fact that Petitioner's running for election was a condition of, and therefore inextricably tied in with, his original appointment, but also is inconsistent with the fact that the only reason any one would consider running for office is so that the office, with its responsibilities and privileges, could subsequently be occupied. Judge McLaughlin felt that the expenses incurred had "not the slightest relationship to the functioning of the judicial office"; but how could the Petitioner have continued to be a judge and hence to have continued to perform those functions without first incurring the election expenses? The interrelation between

[8] Judge McLaughlin cites in this connection the Tax Court decision in *Reed v. Commissioner*, 13 B. T. A. 513 (reversed on another issue, 34 Fed. (2d) 263, reversed 281 U. S. 699), where voluntary contributions to a party organization by a practicing lawyer who was a candidate for the Senate were held not deductible. That case is not binding here, but in any event is clearly distinguishable. There was no evidence in that case that the taxpayer was required to make the contributions to obtain the party's support, or that other candidates, benefited by the taxpayer's contributions, themselves made contributions to benefit the taxpayer. Nor was there any evidence in that case that the contributions were fixed by the proper agency of the party, so as to bear a fair relation to the respective financial interests of the candidates in the outcome of the election.

Judge McLaughlin also cites *Lindsay v. Commissioner*, 34 B. T. A. 840, where a Congressman already in office was denied a deduction for traveling expenses to consult his constituents. That case is likewise not binding here, but is readily distinguishable, as there was no evidence that Lindsay was a candidate for re-election, and the expenses accordingly could not have been necessary to enable him to retain his livelihood.

holding office and running for election to continue in office is even stronger in this case, since it is found as a fact that Petitioner, as a condition of his appointment, agreed to run for election in 1939. In the light of all the circumstances of this case, can it truly be said that one activity—running for election—really had "not the slightest relationship" with another activity—holding office as judge—where the one was not only the ordinary and necessary means of continuing the other, but was also agreed to be done before the other could even begin?

It is respectfully submitted that in his opinion Judge McLaughlin overlooked the well-established distinction between those expenses incurred to pay for preliminary training in the expectation of later entering a given profession or field of work, and those expenses incurred to obtain a specific position or to keep abreast of developments in a field of work which has already been entered into. Thus the expense of attending law school is not deductible, O. D. 452, 2 C. B. 157, whereas subscriptions paid by a practicing lawyer for legal periodicals are deductible. O. D. 785, 4 C. B. 130. Similarly the expense of one training to be a professional singer for his life's work is only preparatory to a subsequent holding of a position as a singer, if he ever obtains one, and hence is not deductible, *Driscoll*, 4 B. T. A. 1008, but the training expenses of an actor to keep himself in good physical condition and thus to enable him to retain his present position, like the election expenses of one already qualified for the office, are deductible. *Hutchison*, 13 B. T. A. 1187; *Denny*, 33 B. T. A. 738. The rulings of the Commissioner permit a member of a labor union to deduct from his taxable income not merely his union dues, O. D. 450 (1920), 2 C. B. 105; I. T. 2888, XIV–1 C. B. 54, but now also the initiation fee essential to his originally joining the union to acquire specific employment. I. T. 3634, 1944, I. R. B. No. 1, p. 11. In other words, if an employee may deduct the fee required to obtain a job in a closed shop, why should not the equally

inescapable campaign expenses to obtain a public office be deductible? And in *Commissioner v. Heininger*, 320 U. S. 467, this Court was dealing with a closely analogous tax problem. There the taxpayer, a dentist, selling false teeth by mail, was faced with a fraud order which, if enforced, would have put him out of business. However, as this Court found, "he did not voluntarily abandon the business, but defended it by all available legal means." Similarly, wher confronted with the expiration of his term, Petitioner did not voluntarily abandon his public office, which was his livelihood, but rather defended it by every legal means—that is, he was a candidate to continue in his position. Why should not Petitioner's lawful expenses in defending his business position be deductible, just as this Court held that Heininger's were?

A case clearly illustrating the proper deductibility of expense to obtain a specific position is *Madge H. Evans*, Memorandum Decision, B. T. A. Docket No. 89,374, unreported, but see C. C. H., B. T. A. Service, Dec. No. 10,620-D. In that case the taxpayer, a celebrated movie actress, was employed in this country under a yearly contract, which her employer had the option to renew. In 1934, while she was still employed under the contract, the taxpayer feared that her employer might not renew the contract for 1935. The taxpayer accordingly sent her mother, who was her business representative, on a trip to England to explore the possibilities of obtaining employment with British film producers, the taxpayer paying the expenses of the trip. While the mother was abroad, the daughter's American contract was renewed, and, the mother's trip having thus become unnecessary, she returned to this country. The Board (now the Tax Court) held that the expenses of the mother's trip, to the extent of that part of the trip spent on the negotiations with the London producers, were deductible by the taxpayer as ordinary and necessary business expenses. It is submitted that this case presents a very close analogy to the case at

bar. Like the Petitioner in the instant case, Miss Evans was already well established in her profession, but feared that she might lose her position. She incurred the expenses in an effort which, like the Petitioner's, turned out to be fruitless. Nevertheless it was held that such expenditures, which were paid by a taxpayer already engaged in a given employment, in order to assure its continuance, were deductible as ordinary and necessary expenses, even though the payments were fruitless.

The tax is on net income; and since Petitioner, like Miss Evans, must be taxed on the compensation received, fairness and equal treatment require that he be allowed, as she was, to deduct his reasonable expenditures, paid by him in a *bona fide*, though unsuccessful, effort to assure the continuance of his compensation from his public office.

3. In the Alternative, the Said Expenses Constitute an Allowable Deduction From Petitioner's 1939 Taxable Income, as "Ordinary and Necessary Expenses Paid or Incurred During the Taxable Year for the Production or Collection of Income," Within the Meaning of Section 23 (a) (2), Added to the Internal Revenue Code by Section 121 (a) of the Revenue Act of 1942.

Section 121 (a) of the Revenue Act of 1942 adds to section 23 (a) of the Internal Revenue Code the following new subsection:

> "(2) Non-Trade or Non-Business Expenses.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

Section 121 (d) makes this amendment retroactive and effective with respect to the taxable year 1939, here involved.

The Report of the House Committee on Ways and Means with respect to this amendment [9] shows that the intention was to allow a deduction for expenses incurred for the production or collection of income, whether or not the income is sought to be produced during the taxable year or during previous or subsequent years. The Report of the Senate Finance Committee is to the same effect.[10]

In other words, if it should be considered that the expenditures incurred were not ordinary and necessary expenses incurred by Petitioner in his business, certainly the payments in question were expenses necessarily incurred for the production of income, since their payment was essential to Petitioner's continuance in the office on which his income depended. His judicial position produced practically all of petitioner's taxable income, and he incurred the expenses here involved in order to continue this income over the ten years following the election. It is true that section 23 (a) (2) was the result of a Congressional desire to allow the type of deductions disallowed by *Higgins v. Commissioner*, 312 U. S. 212. But the Congressional reports show no intent to limit this amendment to investors' expenses, and the language of the new section itself permits the deduction, not only of expenses for the "management, conservation, and maintenance of *property*," but also for any "expenses paid for the production or collection of *income*." In *Higgins v. Commissioner* (6/30/44), C. C. A. 1, 143 F. 2d 654 (a separate and later case from that cited above), the Court stated that, to be allowable, the expense need only bear "a reasonable and proximate relation to the production and collection of income."

In the instant case, the petitioner incurred the expenses in issue in direct relation to the production of his income from his judicial position. In these circumstances, even if it should be held that the expenses in issue were

[9] 1942-2 C. B. 410, 429.
[10] 1942-2 C. B. 570.

not deductible under section 23 (a) as it stood before the recent amendment, it is clear that the amendment permits their deduction because of their "reasonable and proximate relation" to the production of the petitioner's income.

The Court below referred in this connection to the Regulations of the respondent, now embodied in Regulations 111, Section 29.23 (a)-15, which state, in part, "Among the expenses not allowable under Section 23 (a) (2) are . . . campaign expenses of a candidate for public office." In the many years since the first income tax legislation, there has been no such provision anywhere in the respondent's Regulations, until the above provision was published in T. D. 5196 (1942—2 C.B. 96), and even now there is no such provision in the Regulations applicable to business expenses or to losses. T. D. 5196 was approved on December 8, 1942, almost three months *after* the Tax Court hearing in the instant case. Thus throughout the period of less than two years since this Regulation was first issued, the deductibility of a candidate's campaign expenses has been under judicial consideration in the instant case. In these circumstances, it is submitted that this provision certainly does not have the force of law here, and is entitled to little, if any, more weight than any other statement of his position by the respondent herein.

4. In the Alternative, the Petitioner Sustained During 1939, in Connection With His Campaign for Nomination and Election to Retain His Office as Judge as Aforesaid, a Loss in a Transaction Entered Into for Profit.

In considering this alternative ground it is important to bear in mind that the allowability of such a loss rests on fundamentally different factors from those supporting the deduction of business expenses. The statute does not require that a loss suffered in a transaction entered into for profit be "ordinary and necessary". *W. R. Harvey*, 25 B. T. A. 1282, at p. 1291. It is not even necessary that

a loss be incurred in a trade or business, since the term "loss" is much more comprehensive. *Ernest E. Lloyd*, 8 B. T. A. 1029. It is only necessary that the loss be incurred in a transaction entered into for profit.

In the instant case, these requirements are clearly met. That the Petitioner entered this transaction (that is, made every lawful effort to retain his office) for profit has been shown above. And the Petitioner undoubtedly suffered a loss to the extent of the incurred expenditures in issue when he was deprived of his public office by his defeat at the polls.

In his opinion under review, Judge McLaughlin seems to have been under some difficulty in disallowing the deduction as a loss. He states that the Petitioner "received what he paid for" and therefore did not lose anything. But such an approach to the question of what is a deductible loss is far from adequate. If a taxpayer buys a valuable share of stock, for example, he undoubtedly gets what he pays for; but this does not prevent him from deducting a loss when that stock becomes worthless. An inventor who hires laboratory assistants, buys materials, and incurs other development expenses in testing a proposed new article or product clearly gets the valuable services and materials for which he pays, and yet the entire expenses will be deductible as a loss if the invention in question proves to be a failure. *Weingarten, Inc.*, 44 B. T. A. 798 (Acq.); *Dresser Mfg. Co.*, 40 B. T. A. 341 (Acq.); *Acme Products Co., Inc.*, 24 B. T. A. 194 (Acq.). A businessman who sends an agent abroad to develop new business undoubtedly receives the services he pays for, but if the venture is unsuccessful, he still may claim the expense as a deductible loss. *Pope*, Memorandum Decision, B. T. A. Docket No. 105643, unreported; but see C. C. H. B. T. A. Service, Dec. No. 12,572—H; I. T. 1505, I—2 C. B. 112. And one who pays to explore a mining or quarrying property gets the exploratory services paid for, but may claim a loss if the materials sought are not found. *Gopher Granite Co.*,

5 B. T. A. 1216; *Parker*, 1 T. C. 709. A taxpayer gets something of value for every reasonable expenditure, whether it be a capital or expense item, and this does not prevent his deduction of a loss.

An inventor incurs his expenditures while developing his product, and expects his profit from its later performance, the whole process of development and performance being considered for tax purposes as the "transaction" which is entered into for profit. Similarly, in this case, the Petitioner incurred his campaign expenditures while running for election and expected his financial gain from continuing to perform the functions of his office. For tax purposes, the whole process of campaigning for election to a particular office and holding that office is the "transaction" which he entered into for profit. Judge McLaughlin attempts to divorce campaigning from office-holding, so as to hold the loss on the one not allowable because it is, in his view, unconnected with the financial return from the other. But this wholly artificial division of what is clearly one "transaction" has no support whatever in the authorities. See the cases cited in the previous paragraph, and *Stokes v. U. S.* (1937), 19 F. Supp. 577 (D. C., S. D.—N. Y.), where Mandelbaum, D. J., allowed as a loss deduction the expenses of publishing the last volume of a series of books, although on the facts the last volume could not by itself have possibly produced a profit.

Judge McLaughlin bases his definition of a loss on the following quotation from *Dresser v. U. S.*, 55 F. 2d 499, at p. 510. "A loss in order to be deductible under the statute must be an unintentional parting with something of value." An examination of this case shows that the taxpayer was seeking a deduction for the cost of stock which was already worthless when he bought it, and this was properly disallowed. The petitioner here, however, was paying his money for "something of value"—namely, the hire of clerks, postage, and the like; but these "things of value" became valueless to him upon his defeat at the

polls, which was certainly "unintentional." This defeat, by depriving him of his office, and of the profit he intended to make therefrom, caused his loss. It is not the expenditure of the taxpayer's money which must be unintentional, but rather the frustration of the ultimate object for which the money was spent. A taxpayer to whom a loss on worthless stock is allowed intended to pay the purchase price of the stock, but did not intend that expenditure to become fruitless.

The Circuit Court below also quotes from *Giurlani & Bro. Inc. v. Commissioner*, 119 F. 2d 852, where the taxpayer paid the debts of its supplier without taking any subrogation or other consideration. The Court disallowed the payment as a loss, since there was no evidence that the payment could have been of any business advantage to the taxpayer (indeed, it seemed likely that the payment was a gift to relatives), and since, if it was of benefit, the benefit could last for an indefinite period. This is far from the instant case, where the financial benefits from success in the election are obvious, and where the loss from defeat was complete in 1939.

The established types of allowable losses were also overlooked by the Court below in its holding that the campaign expenses were not deductible as ordinary and necessary expenses because "in the nature of a capital item." Even the cost of a capital item is deductible if the anticipated profit from its purchase is irretrievably lost, as happened here upon petitioner's defeat at the polls. The Court below relied on two of its former decisions, *Clark Thread Co. v. Com'r* and *Newspaper Printing Co. v. Com'r*, where the taxpayers' expenditures *achieved* their object. If the Court below had quoted further from *Clark Thread Company v. Commissioner*, 100 F. 2d 257, it would have referred to this passage: "Provision is made in the income tax law for the charging off of such assets over a period of years, where their duration is limited. The Board was also of the opinion that the benefits in this case were of indefinite duration and made no allowance for exhaus-

tion." If the present petitioner had been successful, his expenses (assuming that it would be proper to capitalize them, as Judge McLaughlin suggests) would have had a duration no longer than his ten-year term of office, and under the tax law would have been deductible ratably over that period of time.[11] In the instant case, however, if the expenditures were so capitalized, they would have no duration whatever after the general election in 1939, since he was then unsuccessful in achieving the object for which they were incurred. The *Clark* case and the similar case of *Newspaper Printing Company v. Commissioner*, 56 F. 2d 125, are thus in no sense applicable here.

Petitioner may have received the personal services, postage, committee support, and so on, for which he paid, but when he lost the election he lost his chance to recoup his cost (the expenditures in issue) of placing himself in a position to make the profit for which he entered the transaction; and it is when the taxpayer is involuntarily shut out from such recoupment that the statute grants him a deduction for such expenditures as a loss.

To permit the opinion of the Court below on this point to stand unmodified is to cast doubt on many established types of losses and to spread error and confusion in the tax law far beyond the facts of the instant case.

5. If This Court, on the Record Herewith Presented, Cannot Hold That the Expenses in Issue Are Deductible, the Proceeding Should Be Remanded to the Tax Court With Directions to Admit Testimony (Erroneously Excluded by Judge Hill) of Similar Facts and Opinion Testimony Showing That the Expenses in Issue Were Ordinary and Necessary, and Thereupon to Make Appropriate Findings of Fact.

Where the question at issue is whether certain expenses were "ordinary and necessary", it has already been shown, on the highest authority,[12] that the experience of

[11] Cf. Regulations 111, sec. 29.23 (l)—3.

the whole community must be examined, in order to determine the "norms of conduct" which are controlling. Accordingly, the Petitioner sought to introduce, at the hearing in this proceeding before Judge Hill, the testimony of the chairman of the County Committee of the political party sponsoring petitioner's candidacy, and of the Treasurer of that Committee, both of whom had had extensive experience with campaigns in petitioner's constituency, as evidence of similar facts, showing the course of conduct of other candidates for public office in that constituency, and as opinion testimony, showing that such expenses were, in the opinion of the witnesses, customary there. This testimony was uniformly excluded by Judge Hill (R. 52a-58a; 73a-74a). It thus became impossible for Petitioner to introduce evidence regarding the similar expenses of other candidates in similar campaigns, the amounts spent by such other candidates, the purposes for which their expenses were disbursed, and the results of such disbursements. Petitioner was also denied the opportunity to present the opinion testimony of these witnesses, whose long experience in such campaigns certainly qualified them to give such testimony, as to whether the expenses paid by Petitioner helped his candidacy, whether the assessments paid to the party committees by the other candidates running with Petitioner helped his candidacy, and generally whether in the light of their experience in that constituency, they would say that in their opinion such expenses were not only ordinary but also necessary to attain Petitioner's objective.

The exclusion of this testimony is in marked contrast to the rulings of the Tax Court in other cases involving the problem whether expenses were ordinary and necessary. For example, in *Goedel*, 39 B. T. A. 1, the question was whether an odd-lot broker, who had to take a considerable position in the market, could deduct, as an ordinary and necessary business expense, the cost of insurance on President Roosevelt's life, taken as protection in the event that

findings of fact and opinion by Judge Harron, which were reviewed by the Board, show that testimony was admitted to prove that, many years before, one of the taxpayer's partners had feared loss through an individual's death, had contemplated insurance, had failed to take it out, and had lost heavily; to prove that the markets declined drastically upon the deaths of Presidents Garfield and McKinley; and also that stockholders in companies in which J. P. Morgan was interested had insured his life. Testimony was admitted of the standard forms of business insurance. In this *Goodel* case, the Tax Court held that the expense was not ordinary and necessary, principally on the ground that the expense was unique in the business history of the country. The opinion pointed out particularly that no testimony had been introduced showing the purchase of any such insurance by any other firm. Plainly the Tax Court felt in that case that evidence of similar facts was of critical importance in a proceeding involving this question. Other illustrations are found in *Rees*, 21 B. T. A. 698, where a taxpayer in the tallow business was allowed to deduct the expenses of entertaining customers because they were "within the limits customary in this line of business"; *George Bernards, Inc.*, 8 B. T. A. 716, where the testimony of taxpayer's competitors was admitted to show the reasonableness of salaries paid by the taxpayer; and *N. Y. Talking Machine Co.*, 13 B. T. A. 154; *Wm. S. Gray & Co. v. U. S.*, 35 F. 2d 968; and *Botany Worsted Mills v. U. S.*, 278 U. S. 282, where evidence of salaries paid in similar businesses was likewise admitted and relied on.

Testimony of the conduct of others similarly situated is particularly valuable in a case like the one at bar, where the expenses were incurred as part of a common effort by a number of individuals, that is, of the Petitioner and his running mates, to achieve a result desired by all of them. For example, in *Robert Gaylord, Inc.*, 41 B. T. A. 1179, and *Maloney Electric Co.*, 42 B. T. A. 78, the question was whether various non-banking business houses in St. Louis

could deduct, as ordinary and necessary business expenses, the amounts spent by them pursuant to their respective guaranties of a St. Louis bank which had been in danger of closing. Although the payments were probably unique in the business life of these taxpayers, copious evidence was admitted to show that other banks and business houses in St. Louis gave similar guaranties. Judicial notice was taken of general banking conditions in 1931 and of the methods used to remedy them, both in St. Louis and in other sections of the country. And the Tax Court permitted proof of the entire mutual effort of the participating concerns.

Furthermore, opinion testimony was extensively relied on in the *Gaylord* case. The taxpayer's president was permitted to testify as to the business necessity of giving the guaranty, since otherwise the taxpayer would, in his opinion, have suffered heavy losses. The President of the Clearing House was also allowed to give his opinion as to such necessity and the losses taxpayer would have suffered had it not participated. Similar opinion testimony was admitted in *First National Bank of Skowhegan*, 35 B. T. A. 876, which was likewise an effort to rescue a weak bank. And in *Alabama Cooperage Co.*, 18 B. T. A. 1287, the testimony was admitted of two witnesses with long experience in operating mills similar to the taxpayer's, to show that the "salaries paid to petitioner's officers in the taxable year constituted in their opinion reasonable compensation for the services rendered". Such salaries are, of course, claimed as deductions as ordinary and necessary expenses. *N. Y. Talking Machine Co., supra.*

It is submitted, with all due respect, that Judge Hill's rulings on the evidence in this case were flatly contrary to the practice of the Tax Court in those and many other cases, and that if this Court cannot hold for the Petitioner here, the case should be remanded to the Tax Court with directions to admit the erroneously excluded testimony and to make appropriate findings of fact thereon.

For the foregoing reasons, it is submitted that the expenses in issue should be allowed as deductions, or, if necessary, that the proceeding be remanded.

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Appendix.

INTERNAL REVENUE CODE.

Section 23 (a). Expenses.—

(1) Trade or business expenses.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity . . .

(2) Non-trade or non-business expenses.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

(e) Losses by individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business;

REGULATIONS.

Regulations 101.

Article 23 (a)—1. BUSINESS EXPENSES.—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, . . . Among the items included in business expenses are management expenses, commissions, labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see Article 23 (a)—2), advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. . . . The full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is nevertheless deductible, even though such expenses exceed the gross income derived during the taxable year from such business. . . .

Regulations 111.

Section 29.23 (a)—15. NON-TRADE OR NON-BUSINESS EXPENSES.—(a) *In General.*—Subject to the qualifications and limitations in chapter 1 and particularly in section 24, an expense may be deducted under section 23 (a) (2) only upon the condition that:

(1) it has been paid or incurred by the taxpayer during the taxable year (i) for the production or collection of income which, if and when realized, will be required to be included in income for Federal income tax purposes, or (ii) for the management, conservation, or maintenance of property held for the production of such income; and

(2) it is an ordinary and necessary expense for either or both of the purposes stated in (1) above. . . .

The term "income" for the purpose of section 23 (a) (2) comprehends not merely income of the taxable year but

also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years; and is not confined to recurring income but applies as well to gains from the disposition of property. For example, if defaulted bonds, the interest from which if received would be includible in income, are purchased with the expectation of realizing capital gain on their resale, even though no current yield thereon is anticipated, ordinary and necessary expenses thereafter incurred in connection therewith are deductible. Similarly, ordinary and necessary expenses incurred in the management, conservation or maintenance of a building devoted to rental purposes are deductible notwithstanding that there is actually no income therefrom in the taxable year, and regardless of the manner in which or the purpose for which the property in question was acquired. Expenses incurred in managing, conserving, or maintaining property held for investment may be deductible under this provision even though the property is not currently productive and there is no likelihood that the property will be sold at a profit or will otherwise be productive of income and even though the property is held merely to minimize a loss with respect thereto. The expenses, however, of carrying on transactions, which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses.

Expenses, to be deductible under section 23 (a) (2), must be "ordinary and necessary," which presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of taxable income or to the management, conservation, or maintenance of property held for the production of income.

Regulations 101.

Article 23 (e)—1. Losses by Individuals.—Losses sustained by individual citizens or residents of the United States and not compensated for by insurance or otherwise are fully deductible if (a) incurred in the taxpayer's trade or business, or (b) incurred in any transaction entered into for profit, . . .

In general losses for which an amount may be deducted from gross income must be evidenced by closed and completed transactions, fixed by identifiable events, bona fide and actually sustained during the taxable period for which allowed. Substance and not mere form will govern in determining deductible losses. Full consideration must be given to any salvage value and to any insurance or other compensation received in determining the amount of losses actually sustained. . . .

PENNSYLVANIA ELECTION CODE.

1937 P. L. 1333, 25 P. S. 2600.

Section 1602 (25 P. S. 3222)—Every political committee shall appoint and constantly maintain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members for primary or election expenses; and unless such treasurer is first appointed and thereafter maintained, it shall be unlawful for a political committee or any of its members to collect, receive or disburse money or incur liability for any such purpose. All money collected or received by any political committee, or by any of its members for primary or election expenses, shall be paid over and made to pass through the hands of the treasurer of such committee and shall be disbursed by him; and it shall be unlawful for any political committee, or any of its members, to disburse any money for primary or election expenses, unless such money shall have passed through the hands of the treasurer. 1937, June 3, P. L. 1333, art. XVI, Sec. 1602.

Section 1606 (25 P. S. 3226)—No candidate or treasurer of any political committee shall pay, give or lend or agree to pay, give or lend, directly or indirectly, any money or other valuable thing or incur any liability on account of, or in respect to, any primary or election expenses whatever, except for the following purposes:

First. For printing and traveling expenses, and personal expenses, incident thereto, stationery, advertising, postage, expressage, freight, telegraph, telephone and public messenger service.

Second. For the rental of radio facilities, and amplifier systems.

Third. For political meetings, demonstrations and conventions, and for the pay and transportation of speakers.

Fourth. For the rent, maintenance and furnishing of offices.

Fifth. For the payment of clerks, typewriters, stenographers, janitors and messengers actually employed.

Sixth. For the transportation of electors to and from the polls.

Seventh. For the employment of watchers at primaries and elections to the number and in the amount permitted by this act.

Eighth. For expenses, legal counsel, incurred in good faith in connection with any primary or election. 1937, June 3, P. L. 1333, art. XVI, Sec. 1606.

Section 1607 (25 P. S. 3227)—(a) Every candidate for nomination or election, and every treasurer of a political committee, or person acting as such treasurer, shall, within thirty days after every primary and election at which such candidate was voted for or with which such political committee was concerned, if the amount received or expended or liabilities incurred shall exceed the sum of fifty dollars, file a full, true and detailed account, subscribed and sworn to by him, setting forth each and every sum of money received, contributed or disbursed by him for primary or elec-

tion expenses, the date of each receipt, contribution and disbursement, the name of the person from whom received or to whom paid, and the specific object or purpose for which the same was disbursed. Such account shall also set forth the unpaid debts and liabilities of any such candidate or committee for primary or election expenses, with the nature and amount of each, and to whom owing. In the case of the treasurer of a political committee, the account shall include any unexpended balance of contributions or other receipts appearing from the last previous account filed by him. In the case of candidates for election who have previously filed accounts of their primary expenses as candidates for nomination, the accounts shall only include receipts, contributions and disbursements, subsequent to the date of such prior accounts.

(b) If the aggregate receipts or disbursements and liabilities of a candidate or a political committee in connection with any primary or election shall not exceed fifty dollars, the candidate or treasurer of the committee, as the case may be, shall, within thirty days after the primary or election, certify that fact under oath to the officer or board with whom expense accounts are required to be filed, as hereinafter provided: Provided, however, That if a candidate or political committee does not receive any contributions or make any disbursements or incur any liabilities, he or it shall not be required to file any account or to make any affidavit, but such candidate or political committee shall be deemed for all purposes of this act to have filed an expense account showing no receipts, disbursements or liabilities for primary or election expenses.

(c) Every expense account filed under the provisions of this section shall be accompanied by vouchers for all sums expended amounting to ten ($10) dollars or more. It shall be unlawful for any candidate, agent or treasurer to disburse any money received from any anonymous source. 1937, June 3, P. L. 1333, art. XVI, Sec. 1607.

Name of Candidate (Per Exs. 2 & 3, R. 69a, Appendix, p. 41, *infra*)	*Office* (Appendix, p. 41, *infra*)	*Term of office in years*	*Total Salary*		Assessment *Primary* (Per Ex. 2)	Assessment *General Election* (Per Ex. 3)
M. F. McDonald (Petitioner)	Judge of Common Pleas	10 (a)	$120,000.	(b)	$1,000.	$7,000.
John H. Bonin	Judge of Common Pleas	10 (a)	120,000.	(b)	958.	9,000.
Edward F. McGovern	District Attorney	4 (c)	30,000.	(d)	500.	2,000.
Lester Thomas	Sheriff	4 (c)	24,000.	(e)	500.	3,000.
John Kridlo	County Treasurer	4 (c)	24,000.	(e)	450.	1,500.
Stanley Leonard	Coroner	4 (c)	12,000.	(f)	350.	1,200.
Joseph Bialogowicz	Recorder of Deeds	4 (c)	20,000.	(g)	350.	1,325.
Ralph Gitz	Register of Wills	4 (c)	16,000. plus	(e)	500.	3,000.
John A. Reily	Commissioner	4 (c)	24,000.	(h)	500.	3,000.
Stanley S. Janowski	Commissioner	4 (c)	24,000.	(h)	500.	2,000.

(a) Penna. Constitution, Article 5, Sec. 15.
(b) 1929 P. L. 1780, Sec. 4; 17 P. S. 834.
(c) 1929 P. L. 1278, Sec. 31; 16 P. S. 51.
(d) 1931 P. L. 401, Sec. 246; 16 P. S. 246.
(e) 1876 P. L. 13, Sec. 13, as amended; 16 P. S. 2291; Pennsylvania Manual, 1941 edit., p. 863.
(f) 1927 P. L. 348, Sec. 1; 16 P. S. 2294.
(g) 1927 P. L. 516, Sec. 1; 16 P. S. 2292.
(h) 1927 P. L. 403, Sec. 1; 16 P. S. 2542.

LUZERNE COUNTY GENERAL ELECTION

(Tuesday, November 7, 1939)

Supreme Court Judge	1st D	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Herbert F. Goodrich (D.)	11,356	9,716	11,426	8,972	9,991	10,685	15,438	77,583
Marion D. Patterson (R.)	11,559	11,683	9,752	10,172	13,408	14,274	18,460	89,307

Superior Court Judge (3)	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
J. Harold Flannery (D.)	11,891	10,068	12,657	9,364	10,632	11,987	16,728	83,347
E. J. Thompson (D).....	11,350	9,707	11,409	8,951	9,975	10,676	15,370	77,438
William H. Keller (D.)...	11,317	9,708	11,372	8,938	9,964	10,633	15,320	77,252
Thomas J. Baldrige (R.)..	11,263	11,417	9,281	9,950	13,105	13,654	18,057	86,687
William E. Hirt (R.).....	11,322	11,491	9,566	10,008	13,153	13,936	18,236	87,712
William H. Keller (R.)...	11,470	11,566	9,624	10,104	13,255	14,064	18,366	88,449

Common Pleas Court (2)	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
John H. Bonin (D).....	13,733	10,608	11,952	9,907	10,783	11,515	15,976	84,474
M. F. McDonald (D).....	12,030	10,159	12,020	9,168	10,569	11,429	16,482	81,857
W. A. Valentine (R).....	10,813	11,440	9,908	10,039	13,340	14,610	18,871	89,021
John S. Fine (R).....	10,885	11,502	10,040	10,368	13,320	14,278	18,364	88,757

District Attorney	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Edward F. McGovern (D.)	11,363	9,738	11,535	8,830	10,327	10,987	16,232	79,007
Leon Schwartz (R).....	11,883	11,936	10,194	10,774	13,683	14,566	18,795	91,781

Sheriff	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
G. Lester Thomas (D.)...	11,404	9,776	11,457	9,040	10,240	10,839	15,457	78,213
Dallas Shobert (R).....	11,469	11,642	9,863	10,131	13,367	14,310	18,811	89,583

Commissioners (3)	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
John A. Riley (D).....	11,512	9,869	11,720	8,996	10,179	10,940	15,810	79,026
Stanley Janowski (D.)....	11,530	9,957	11,734	9,976	10,357	10,985	15,714	80,247
John A. MacGuffie (R.)..	11,671	11,735	10,024	10,196	13,685	14,760	19,152	91,223
Robert Lloyd (R).....	11,543	11,850	9,866	9,881	13,444	14,458	18,613	89,655

Treasurer	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
John Kridlo (D.).....	11,387	9,641	11,581	9,006	9,994	10,772	15,111	77,492
John B. Wallis, Jr. (R.)..	11,549	11,746	9,783	10,165	13,486	14,359	18,863	89,951

Register of Wills	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Ralph Gitz (D.).....	11,861	9,631	11,049	8,848	9,779	10,475	15,090	76,821
John Shivell (R).....	11,263	11,804	10,460	10,324	13,768	14,679	19,317	91,615

Recorder	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Joseph Bialogowicz (D.)..	11,372	9,801	11,351	9,036	10,325	10,750	15,501	78,136
Charles Bufalino (R).....	11,533	11,563	10,103	10,072	13,411	14,383	18,749	89,817

Coroner	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	15,428	78,151

PHOTOSTAT OF PAGE 32 OF WII

William H. Keller (R.)...	11,470	11,000	9,024	10,104	13,200	14,004	15,000	88,449

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Coroner	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Stanley Leonard (D.)....	11,305	9,626	11,948	8,994	9,981	10,848	15,428	78,151
Lewis S. Reese, Jr. (R.)..	11,587	11,724	9,598	10,195	13,449	14,382	18,781	89,849

Surveyor	1st D.	2nd D.	3rd D.	4th D.	5th D.	6th D.	7th D.	Totals
Steve Guido (D.).....	11,263	9,584	11,355	8,927	9,964	10,699	15,293	77,085
Michael Adomshick (R.)..	11,605	11,643	9,805	10,084	13,449	14,223	18,659	89,468

OFFICIAL STATE VOTE FOR JUDICIAL VACANCIES

Supreme Court—Marion D. Patterson (R.), 1,700,358; Herbert F. Goodrich (D.), 1,358,874.

Superior Court—J. Harold Flannery (D.), 1,346,977; E. J. Thompson (D.), 1,340,273; William H. Keller (D.), 1,309,777; William H. Keller (R.), 1,585,639; Thomas Baldrige (R.), 1,673,184; William E. Hirt (R.), 1,658,597.

IN THE

Supreme Court of the United States

No. 36. October Term, 1944.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Reply Brief for Petitioner.

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TABLE OF CASES AND OTHER AUTHORITIES.

IN THE

Supreme Court of the United States.

No. 36. October Term, 1944.

MICHAEL F. McDONALD,
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v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY BRIEF FOR PETITIONER.

ARGUMENT.

In the first section of Respondent's argument, he suggests that Petitioner, by relying on the fact that he was already in office, seeks to draw an untenable distinction between his case and those of candidates seeking office for the first time.

This suggestion misconstrues Petitioner's argument. Petitioner was obliged to base his argument upon the facts of his particular case, namely, that he was in public office in 1939, and that, in order to continue in that office for the ensuing full term of ten years, he was obliged by the State law to run for election. Petitioner does not argue that the deductibility of election expenses should not apply to those seeking office for the first time. If such a distinction would be indefensible, it need not be made.

The Respondent further argues that the determination of what constitutes "ordinary and necessary" campaign expenses, if held deductible, would pose a question for the Commissioner without satisfactory guidance to its solution.

But the answer to any such argument is that the "ordinary and necessary" business expense provision contained in Section 23 (a) (1) (A) of the Internal Revenue Code has posed countless questions for the Commissioner to solve in its application to private business; yet with the assistance of his expert staff of Revenue Agents located throughout the country, the Commissioner has been well able to solve these questions and will continue to do so. The same is true of Section 23 (a) (2) of the Code relative to non-trade or non-business expenses, and of Section 23 (e) regarding losses. Under all these sections, countless problems have been posed and the Commissioner has had them solved in the manner prescribed by law.[1] Furthermore, this Court has not hesitated to construe tax statutes in the manner which best served their ultimate purposes, regardless of the possibility of subsequent administrative adjustments or even litigation.[2] And while the election legislation of some states may give less detailed guidance than the Pennsylvania statute, there is, nevertheless, a substantial body of legislation in the various states to regulate such expenditures; and in 1937 no less than thirty-eight states limited the amounts which candidates could spend for campaign purposes.[2] Is it any more unreasonable for the Commissioner to be guided by state regulation and limitation of such expenses in determining their deductibility than it is for him to determine the deductibility from a taxable estate of the counsel fees, executor's commissions, and other charges allowed by the state law having jurisdiction thereof? In fact, with this body of state legislation as a guide, with the statutory limits and the full reports of expenditures required in most states for examples, the Commissioner may find himself in an even better position than he was when he first began determining which ex-

[1] For example, in *Helvering v. Hallock*, 309 U. S. 106, and in *Helvering v. Clifford*, 309 U. S. 331.

[2] See the legislation referred to in Respondent's Brief, page 10, footnote 6.

penses of a private business were "ordinary and necessary."

The Respondent further argues that to allow these deductions would be to embroil him in political controversy. But the returns of candidates and officeholders must be audited in any event, and must already in numerous instances include matters which could be the subject of political controversy. Yet the Commissioner, through competent administration, is auditing thousands of them without difficulty.

II.

Respondent argues that Petitioner has failed to sustain the burden of establishing his right to the deduction which he claims. But what further burden can rest on the Petitioner? Petitioner has shown in his main brief that the *unambiguous provisions* of Section 23 (a) (1) (A), dealing with trade or business expenses, of Section 23 (a) (2) dealing with non-trade or non-business expenses, and of Section 23 (e) dealing with losses by individuals, entitle him to deduct the campaign expenses incurred by him in 1939.

(a) With regard to the deductibility of the expenses as ordinary and necessary business expenses, Respondent further argues at page 5 that the expenses in issue "* * * are analogous to expenditures made by an individual in order to equip himself for a trade or profession, which uniformly have been held to be non-deductible." Petitioner's main brief, pages 20-22, clearly shows the distinction between expenditures made "to equip a person for a trade or profession", and those made to obtain a specific position in a trade or profession already being followed. As to the latter expenses, they have uniformly been held to be deductible. Petitioner did not incur the expenses in issue "to equip himself for a trade or profession." Petitioner was already equipped by his legal training to accept his judicial appointment. By the time of the expenses in

issue, he also had had a year's experience as judge. Are not his election expenses much more analogous to the training expenses of an actor to keep in condition; or a movie actress' expenses in sending her mother to seek employment for her abroad; or to Labor Union dues and initiation fees? All these have been allowed as deductions, and are clearly unlike those incurred by a student at Law School, equipping himself to become that which the Petitioner already was—a lawyer and judge.

Respondent further argues, at page 5, that "The nondeductibility of campaign expenses is confirmed by an administrative construction of the statutory provisions involved which has obtained for nearly a quarter of a century. There is abundant evidence of congressional acquiescence in that construction."

Respondent points to no statutory provision, and to no Regulation promulgated by the Commissioner and approved by the Secretary of the Treasury, holding that a candidate's election campaign expenses are not deductible (except Treasury Decision 5196, promulgated three months after the hearing in the instant case before the Tax Court and then only under the new provision, Section 23 (a) (2), dealing with non-trade and non-business expenses). Whatever other rulings of the bureau there may be, such as O. D.'s, I. T.'s, etc., other than Treasury Decisions, these are of no effect here, as this Court held in *Helvering v. New York Trust Company*, 292 U. S. 455-468 (1934).

> "The rulings, * * * cited by the Commissioner * * * 'have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of the law.' See cautionary notice published in the bulletins containing these rulings."

See also *Biddle v. Commissioner*, 302 U. S. 573, 582 (1938), wherein Justice (now Chief Justice) Stone, said—

> "Laying aside the fact that departmental rulings not promulgated by the Secretary are of little aid in interpreting a tax statute, * * *"

citing *Helvering v. New York Trust Co.*, supra. And the two decisions of this Court on which Respondent relies, *White v. Winchester Club*, 315 U. S. 32, and *Helvering v. Griffiths*, 318 U. S. 371, both clearly dealt with subjects where the Treasury's position had been made clear from the beginning in Regulations, approved by the Secretary. Such tentative interpretations as O. D.'s do not gather authority with age: even the venerable O. D. 864, announced in 1921, and quoted in the Appendix to Respondent's Brief, has been disregarded, so far as it holds that a Congressman may not deduct his living expenses in Washington, by the recent decisions of the Second and Ninth Circuit Courts of Appeals, in *Coburn v. Commissioner*, 138 F. 2d 763 (Nov. 29, 1943), and in *Wallace v. Commissioner*, ___ F. 2d ___ (July 17, 1944), 1944 Prentice-Hall Federal Tax Service, para. 62,705, which held that an actor who maintains a domicile in New York or San Francisco may deduct living expenses incurred while working for extended periods of time in Hollywood.[3]

(b) With regard to the deductibility of the expenses in issue as "non-business" expenses, Respondent's argument is that the 1942 amendments did not create "a vague new category of deductible expenditures." But a special category of expenses exists; it includes expenditures which are not "business" and yet are not "personal;" and, as Respondent states, at page 33 of his Brief, it was to render this category of expenses deductible that the 1942 Amendment was passed.[4] The *VanWart* and *Higgins* decisions may have crystallized the desire for the Amendment, but nowhere in the Committee reports or in the language of the amendment is there any limitation solely to in-

[3] In both the *Coburn* and the *Wallace* cases, the Solicitor General determined not to file petitions for certiorari in this Court.

[4] *Cf.* Hearings before Ways and Means Committee on 1942 Revenue Revision, 77th Cong., 2d Sess., Vol. 5, p. 2802.

vestors' expenses. If it is indefensible to distinguish between candidates already in office and those seeking office, can it be imagined that Congress in adopting the plain language of the amendment, intended to favor investors, as against those persons incurring "ordinary and necessary" expenses for the production of income from gainful employment?

If the process of running for elective office is to be treated differently from performing the functions of the office, and if, as Respondent says (at page 16 of his Brief), "campaigning for nomination or election to public office does not constitute the carrying on of any trade or business," then the expenses in issue, which were certainly undertaken to produce income, are in the third category, and therefore are deductible under the 1942 Amendment.

(c) With regard to the allowance of the expenditures as a loss, Respondent argues that this would permit campaign expenses to be deducted by a losing candidate but not by one who was successful. But if this distinction is considered unfair, it would be entirely consistent with established principles of the tax law to permit the successful candidate to capitalize his expenditures and to amortize them by claiming a proportionate deduction in each ensuing year of his term of office. Compare the deduction of a lessee's improvements over the term of the lease, Reg. 103, Sec. 19.23 (a)-10.

On page 28, of the Respondent's brief, he states—

> "In the present case the taxpayer defrayed part of his campaign expenses from money contributed to him for that purpose (R. 30a). Although he sought to deduct the entire amount of the campaign expenses, he did not return the money contributed as income (R. 105a, 29a). Consistently with his determination that the campaign expenses were deductible, the commissioner has not asserted that the money contributed was income (R. 8a-9a)."

This money referred to by Respondent was $500 contributed to Petitioner by his son. Section 22 (b) of the Internal Revenue Code provides that gifts shall not be included in gross income. Normally, amounts paid over by one member of the family to another member thereof, without consideration, would be considered as a gift and therefore excluded from the recipient's income. The Commissioner has ruled, I. T. 3276, 1939-1 Cum. Bull., 108, that such campaign contributions are gifts and not income. (See page 17 of Respondent's Brief, footnote 19.) However, where the money is paid over for a specific purpose, such as in the instant case by the son to his father to defray in part the campaign expenses incurred by his father, it might not be considered to be a gift; but it most assuredly would not be income, being rather applied, if at all, in reduction of the father's expenses. It thus may well be that the amount claimed as a deduction by Petitioner should be reduced by $500 if this Court considers that the amount paid by the son to the father is not a gift.

Wherefore, it is respectfully submitted that the contentions of Petitioner's principal Brief should be sustained.

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Of Counsel.

No. 768 36

In the Supreme Court of the United States

OCTOBER TERM, 1943

MICHAEL F. McDONALD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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The findings of fact and opinion of the Tax Court of the United States (R. 115a–118a) are reported in 1 T. C. 738. The opinion of the Circuit Court of Appeals (R. 122a–126a) is reported in 139 F. 2d 400.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 9, 1943 (R. 127a). The petition for a writ of certiorari was filed on March 8, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. May the incumbent, by governor's interim appointment, of a state judicial office deduct a contribution to the party campaign fund and expenses incurred by him in connection with his unsuccessful campaign for reelection for a full term either—

(a) As ordinary and necessary expenses paid in carrying on a trade or business within the meaning of Section 23 (a) of the Internal Revenue Code, as amended by Section 121 of the Revenue Act of 1942; or

(b) As expenses paid for the production of income within the meaning of Section 23 (a) of the Internal Revenue Code, as amended by Section 121 of the Revenue Act of 1942; or

(c) As a loss incurred in a transaction entered into for profit within the meaning of Section 23 (e) (2) of the Internal Revenue Code?

2. Did the Tax Court err in excluding evidence and in making inadequate findings of fact?

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set out in Appendix A, *infra*, pp. 10–13.

STATEMENT

The facts as stipulated (R. 28a–30a) and as found by the Tax Court (R. 115a–116a) may be summarized as follows:

The taxpayer, a resident lawyer of Pennsylvania, was appointed by the Governor of Pennsylvania on December 1, 1938, to fill an unexpired term as a judge of the Court of Common Pleas for the Eleventh Judicial District of Pennsylvania, which district is coextensive with Luzerne County (R. 28a, 115a–116a). The office carried an annual salary of $12,000. At the time of his appointment, taxpayer agreed to be a candidate for the full ten-year term beginning January 1, 1940. He was a candidate to succeed himself, in both the primary and the general elections of 1939. He won in the primary but was defeated in the general election. (R. 116a.)

In order to get the support of the Democratic organization of Luzerne County, taxpayer had to pay the amount "assessed" by the subcommittee of the Democratic Party. Each of the candidates gave the local treasurer authority to expend his contribution, and expenditures from the fund were principally on behalf of all the candidates. Taxpayer contributed $8,000 to the party fund and in addition expended on his own behalf $5,017.27 for advertising, traveling, and other expenses in connection with his campaign. He received a contribution of $500 from his son for the purpose of defraying part of his campaign expenditures. (R. 116a.)

In his income tax return for the taxable year 1939, which was filed on a cash receipts and disbursements basis, the taxpayer deducted $13,017.27

"as reelection expenses." The Commissioner disallowed the amount claimed and found a deficiency in tax of $2,506.77 for the taxable year 1939. (R. 115a.) The Tax Court sustained the deficiency in tax (R. 119a) and the Circuit Court of Appeals affirmed (R. 127a).

ARGUMENT

This case does not warrant further review. As petitioner recognizes (Pet. 5, 9, 10), there is no conflict. The decision is in accord with prior decisions of the Tax Court, which has consistently denied deductions for campaign contributions and campaign expenses by a candidate for office.[1] The decision, moreover, is in accord with express provisions of Treasury Regulations and is plainly correct.[2]

1. Section 23 (a) (1) of the Internal Revenue Code (Appendix A, *infra*, p. 10) allows deduction only for those ordinary and necessary expenses which are paid or incurred in carrying on a trade or business. Section 48 (d) of the Internal

[1] *Reed* v. *Commissioner*, 13 B. T. A. 513, reversed on another issue, 34 F. 2d 263 (C. C. A. 3d), reversed, 281 U. S. 699; *Lindsay* v. *Commissioner*, 34 B. T. A. 840.

[2] Sec. 19.23 (o)-1 of Regulations 103, promulgated under the Internal Revenue Code (Appendix A, *infra*, p. 13) prohibits the deduction of all contributions for campaign expenses without exception. Sec. 19.23 (a)-15 [as added by T. D. 5196, 1942-2 Cum. Bull. 96], (Appendix A, *infra*, p. 12) prohibits the deduction of campaign expenses of a candidate for public office. See also Sec. 19.23 (a)-1 and Sec. 19.23 (a)-5 (Appendix, *infra*, p. 11).

Revenue Code provides that the term "trade or business" includes the performance of the functions of a public office. Petitioner has not, however, shown that the disbursements of his unsuccessful campaign were directly connected with carrying on the business in which he was engaged, i. e., acting as county judge. Cf. *Higgins* v. *Commissioner*, 312 U. S. 212; *Kornhauser* v. *United States*, 276 U. S. 145.

It is apparent that the expenses here sought to be deducted were not incurred in performance of the judicial duties of the office which, at the time of incurring the expenses, was the taxpayer's "business." Rather, they resulted from "running for office" which certainly is not a business carried on for profit though income results from performance of duties if one is elected. The contribution of $8,000 to the general party fund was to promote the success of all the candidates (R. 116a). As the Tax Court held (R. 117a), these campaign expenses had no relationship to the functioning of the judicial office held by the taxpayer.

The expenses here were personal rather than business expenses. They were antecedent to, and anticipatory of, attaining judicial office and fall under the ban of Section 19.23 (a)-15 of Treasury Regulations 103 (Appendix A, *infra*, p. 12) denying a deduction for expenses incurred in seeking employment or placing oneself in a position to render personal services, because such personal

expenses are expressly excluded as deductible by Section 24 of the Code (Appendix A, *infra*, p. 11).

2. The taxpayer next claims the expenses are deductible under Section 23 (a) (2) of the Internal Revenue Code, as amended by Section 121 of the Revenue Act of 1942 (Appendix A, *infra*, p. 10), as nontrade or nonbusiness expenses.[3] This amendment resulted from the decision in *Higgins* v. *Commissioner*, 312 U. S. 212, denying a deduction for expenses incurred in connection with managing the taxpayer's investments because such management did not constitute a trade or business. The purpose of the amendment and its restrictions are set out in S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 87–88 (Appendix B, *infra*, pp. 14–15).[4] As stated in the opinions below (R. 117a–118a, 126a), it was never designed to cover expenses of the type found in the present case. Furthermore, Section 19.23 (a)–15 of Treasury Regulations 103, promulgated under Section 121, as amended by T. D. 5196 (Appendix A, *infra*, p. 12), expressly exclude "campaign expenses" as a deductible item of nontrade or nonbusiness expense. The taxpayer is attempting to bring within this amendment expenses which are personal to him. The amendment does not cover such expenses. Under the regulations, personal expenses are expressly excluded: the committee

[3] The amendment was by Section 121 (e) given retroactive application to all prior Revenue Acts.

[4] See also H. Rep. No. 2333, 77th Cong., 2d Sess., pp. 74–75.

reports, *supra,* show the purpose to subject the amendment to all the restrictions and limitations that apply under Section 23 (a) (1) except the requirement of being incurred in connection with a trade or business.

3. The taxpayer next claims that the expenditures are deductible as a loss under Section 23 (e) of the Internal Revenue Code (Appendix A, *infra,* pp. 10–11). The loss provisions do not apply to all out-of-pocket disbursements for which the taxpayer receives no immediate tangible benefit. Cf. *Kornhauser* v. *United States,* 276 U. S. 145, 152. Election expenditures are not deductible losses under Section 23 (e) (2) because they are not "incurred in any transaction entered into for profit." There is no pecuniary profit in running for election, the only transaction in which the expenses were incurred. As the Tax Court pointed out (R. 117a), the judicial salary is paid for performing the functions of judge, not for winning an election.

Furthermore, as pointed out by the Circuit Court of Appeals (R. 125a), the money disbursements were not the involuntary parting with something of value contemplated by the statute as constituting a deductible loss. Failure to realize a desired profit is not of itself a loss. Cf. *Hort* v. *Commissioner,* 313 U. S. 28, 32–33. To be deductible, a loss must be one which is not compensated for by insurance *or otherwise* (Section

23 (e), Appendix, *infra*, pp. 10–11). Here the taxpayer received a *quid pro quo* for his expenditures. He received the support of his party, he obtained publicity and value in the form of advertising, clerical assistance, and the transportation paid for. (R. 116a.) Since he received value for his expenditures a loss cannot be claimed for the outlay. He did not lose the expenditures; he engaged in making them. He acquired something in return. True, he lost in the election and in a sense he lost the emoluments of an office which his defeat prevented him from obtaining, but the tax law does not grant a deduction for the loss of anticipatory income (*Hort* v. *Commissioner*, *supra*).

4. There is no substance in the error assigned (Pet. 5) to the exclusion by the Tax Court of evidence that the expenses were "ordinary and necessary." We may assume that the expenses were ordinary and necessary campaign expenses permitted by the Election Code of Pennsylvania.[5] The decisions below correctly held that the expenditures were not business expenses; therefore it is irrelevant whether they were ordinary and necessary.

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[5] The applicable statutory provisions of that Code are set out in the appendix to the petition for certiorari and brief (pp. 20–22).

CONCLUSION

The decision below is correct, there is no conflict, and the petition should be denied.

Respectfully submitted.

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MARCH 1944.

APPENDIX A

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Section 121 of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or Business Expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business: * * *.

* * * * * *

(2) *Non-Trade or Non-Business Expenses.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

* * * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *.

* * * * * *

(26 U. S. C., Sec. 23.)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses; * * *.

* * * * * *

(26 U. S. C., Sec. 24.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.23 (a)-1. *Business expenses.*—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business * * *.

* * * * * *

SEC. 19.23 (a)-5. *Professional expenses.*—A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, the rent paid for office rooms, the cost of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amounts currently expended for books, furniture, and professional instruments and equipment, the useful life of which is short, may be deducted.

SEC. 19.23 (a)-15. [as added by T. D. 5196, 1942-2 Cum. Bull. 96.] *Nontrade or nonbusiness expenses.*—

* * * * *

(b) Except for the requirement of being incurred in connection with a trade or business, a deduction under this section is subject to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business. This includes restrictions and limitations contained in section 24, as amended. * * *

Capital expenditures, and expenses of carrying on transactions which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses. * * *

Among expenditures not allowable under section 23 (a) (2) are the following: Commuters' expenses; * * * expenses in seeking employment or in placing oneself in a position to begin rendering personal services for compensation, campaign expenses of a candidate for public office, bar examination fees and other expenses incurred in securing admission to the bar, and corresponding fees and expenses incurred by physicians, dentists, accountants, and other taxpayers for securing the right to practice their respective professions.

* * * * *

SEC. 19.23 (o)–1. *Contributions or gifts by individuals.*—

* * * * * * *

* * * contributions for campaign expenses, are not deductible from gross income.

* * * * * *

APPENDIX B

S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 87–88:

SECTION 121. NON-TRADE OR NON-BUSINESS DEDUCTIONS.

* * * The amendment made by this section allows a deduction for the ordinary and necessary expenses of an individual paid or incurred during the taxable year for the production and collection of income, or for the management, conservation, or maintenance of property held by the taxpayer for the production of income, whether or not such expenses are paid or incurred in carrying on a trade or business, and also allows a deduction for the exhaustion and wear and tear (including a reasonable amount for obsolescence) on property held for the production of income, whether or not such property is used by the taxpayer in a trade or business.

For an expense to be deductible under this section, it must have been incurred either (1) for the production or collection of income, or (2) for the management, conservation, or maintenance of property held for the production of income. Ordinary and necessary expenses so paid or incurred are deductible under section 23 (a)(2) even though they are not paid or incurred for the production or collection of income of the taxable year or for the management, conservation, or maintenance of property held for the production of such income. The term "income" for this purpose comprehends not merely income of the tax-

able year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years, and is not confined to recurring income but applies as well to gain from the disposition of property. Expenses incurred in managing or conserving property held for investment may be deductible under this provision even though there is no likelihood that the property will be sold at a profit or will otherwise be productive of income, and even though the property is held merely to minimize a loss with respect thereto. The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as non-trade or non-business expenses.

Expenses, to be deductible under section 23 (a) (2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1944

No. 36

In the Supreme Court of the United States

OCTOBER TERM, 1944

MICHAEL F. McDONALD, PETITIONER

v.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

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JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 9, 1943 (R. 127a). The petition for a writ of certiorari was filed on March 8, 1944, and granted on April 10, 1944 (R. 128a). The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. May the incumbent, by the Governor's interim appointment, of a state judicial office deduct a contribution to the party campaign fund and expenses incurred by him in connection with his unsuccessful campaign for election for a full term beginning immediately upon the expiration of the term to which he had been appointed, either—

a. As ordinary and necessary expenses paid in carrying on a trade or business within the meaning of Section 23 (a) of the Internal Revenue Code, as reenacted by Section 121 of the Revenue Act of 1942; or

b. As expenses paid for the production of income within the meaning of Section 23 (a) of the Internal Revenue Code, as amended by Section 121 of the Revenue Act of 1942; or

c. As a loss incurred in trade or business or in a transaction entered into for profit within the meaning of Section 23 (e) of the Internal Revenue Code?

2. Did the Tax Court err in excluding evidence and in making inadequate findings of fact?

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set out in Appendix A, *infra*, pp. 37–40.

STATEMENT

The facts as stipulated (R. 28a–30a) and as found by the Tax Court (R. 115a–116a) may be summarized as follows:

The taxpayer, a resident lawyer of Pennsylvania, was appointed by the Governor of Pennsylvania on December 1, 1938, to fill an unexpired term as a judge of the Court of Common Pleas for the Eleventh Judicial District of Pennsylvania, which district is coextensive with Luzerne County (R. 28a, 115a–116a). The office carried an annual salary of $12,000. At the time of his appointment the taxpayer agreed to be a candidate for the full ten-year term beginning January 1, 1940, immediately after the expiration of the term to which he had been appointed. He was a candidate to succeed himself, in both the primary and the general elections of 1939. He won in the primary but was defeated in the general election (R. 116a).

In order to get the support of the Democratic organization of Luzerne County, the taxpayer had to pay the amount "assessed" by the subcommittee of the Democratic Party. Each of the candidates gave the local treasurer authority to expend his contribution, and expenditures from the fund were principally on behalf of all the candidates. The taxpayer contributed $8,000 to the party fund and in addition expended on his own behalf $5,017.27 for advertising, traveling, and

other expenses in connection with his campaign. He received a contribution of $500 from his son for the purpose of defraying part of his campaign expenditures (R. 116a).

In his income-tax return for the taxable year 1939 (R. 105a–111a), which was filed on a cash receipts and disbursements basis, the taxpayer deducted $13,017.27 as "reelection expenses." The Commissioner disallowed the deduction and found a deficiency in tax of $2,506.77 (R. 115a). The Tax Court sustained the deficiency in tax (R. 119a) and the Circuit Court of Appeals affirmed (R. 127a).

SUMMARY OF ARGUMENT

I

A decision in petitioner's favor would by no means solve the problem to which he points, of the allegedly deterrent effect of income taxes upon the willingness of individuals to become candidates for elective office. A decision which was limited to expenditures by incumbents seeking to succeed themselves would leave untouched the problem of those seeking office for the first time. A distinction between the two types of candidates would, moreover, be indefensible from a policy standpoint. The question of what constituted "ordinary and necessary" campaign expenses, should they be held deductible, would, moreover, be constantly presented to the Commissioner of

Internal Revenue without satisfactory guidance to its solution. The problem relates to the general one of expenditures in election campaigns, which has been recognized as difficult for many years. Neither its general phases nor its tax aspect can be satisfactorily treated except in carefully devised legislation.

II

The taxpayer has failed to sustain the burden, which rests upon him, of establishing his right to the deduction which he claims. The issue, moreover, is of such a nature that the decision of the Tax Court should receive great weight.

a. The taxpayer's expenses were not incurred in carrying on a trade or business. Performance of the functions of a public office constitutes a business, but campaigning for office is not included in it. Expenditures in the course of a campaign are "personal" and as such are expressly made nondeductible. They are analogous to expenditures which an individual makes in order to equip himself for a trade or profession, which have uniformly been held to be nondeductible. The nondeductibility of campaign expenses is confirmed by a consistent administrative construction of the statutory provisions involved which has obtained for nearly a quarter of a century. There is abundant evidence of congressional acquiescence in that construction.

b. The retroactive provision of the Revenue Act of 1942 for the deduction of expenses incurred for the production of nonbusiness income adds nothing to the taxpayer's case. That provision was intended to permit the deduction of definite types of nonbusiness expenses which the decisions in *Van Wart* v. *Commissioner*, 295 U. S. 112, and *Higgins* v. *Commissioner*, 312 U. S. 212, had disclosed as nondeductible under existing provisions, although the resulting income was taxable and the expenditures themselves were similar in all respects to those incurred in the course of a business. The amendment did not enlarge the concept of trade or business or the category of business expenses, nor did it create a vague new category of deductible expenditures which would in effect have amended the express prohibition of Section 24 (a) (1) of the Internal Revenue Code upon the deduction of personal expenses. If Congress had intended to provide for the deduction of expenses incident to an attempt to acquire a status such as that of holding public office, it would have given the matter explicit attention and would have used words appropriate to that end.

c. The taxpayer's contention does not receive any support from the loss provisions of the statute. Personal expenses are expressly nondeductible "in any case," and may not be deducted in the guise of a loss. Moreover, the taxpayer probably gained prestige and political standing of unmeasurable

value from the campaign, even though he lost the election. He fails to give any consideration to this factor. From the standpoint of the legislative problem which he stresses, moreover, a deduction upon the loss theory would permit campaign expenses to be deducted by a losing candidate but not by one who was successful in the election—a result which is itself a strong reason for concluding that the loss provision of the statute has no application.

III

Since no expenses of a political campaign are deductible, it is unnecessary to consider the assignment of error with regard to the Tax Court's exclusion of evidence relating to whether the expenses in question were ordinary and necessary in the sense of being of common occurrence in political campaigns.

ARGUMENT

I

THE LEGISLATIVE PROBLEM TO WHICH PETITIONER CALLS ATTENTION WOULD NOT BE SOLVED SATISFACTORILY BY JUDICIAL DECISION UNDER THE TAX LAWS AS THEY NOW STAND, EVEN IF THE APPLICABLE PROVISIONS WERE SUSCEPTIBLE OF THE INTERPRETATION WHICH THE PETITIONER SEEKS TO PLACE UPON THEM

The petition and brief of the petitioner stress the importance, in his view, of the deterrent effect which the need for campaign expenditures has upon potential candidates for elective office, when

to the expenditures themselves are added income taxes at the rates now being levied.[1] It is argued that because of this factor the applicable provisions of the Internal Revenue Code should be so interpreted as to permit the deduction of his campaign expenditures from his income for 1939.

A decision in petitioner's favor would, however, by no means solve even the Federal income tax aspects of the problem to which he points. Petitioner concedes as much by arguing that the case of an incumbent seeking to succeed himself in office is different from that of one who aspires to an office for the first time;[2] for a decision based

[1] It should be pointed out in this connection that income taxes cannot be a burden and cannot have a deterrent effect upon candidates, actual or potential, except insofar as they enjoy incomes which bring them into the taxable brackets. Inability to deduct campaign expenses can have no greater adverse effect upon an individual than the amount of his tax, which in many instances is small.

[2] Petitioner's brief is not entirely consistent upon this point. In much of it, however, reliance is placed upon the fact that he was in office at the time of the primary and election campaigns and was seeking to "continue in" (Pet. Br. 3, 7, 12, 21) or "retain" (*id.* 5, 11, 12, 25) his office as against those who sought "to deprive him of it" (*id.* 12), despite his decision not to "voluntarily abandon" it (*id.* 21). This language suggests a revival of the theory, never embraced in American law except in a few anomalous cases, see Stoner, *Legislating the Incumbent Out of Office* (1914) 12 Mich. L. Rev. 293, and definitively repudiated when suggested, *Taylor & Marshall* v. *Beckham*, 178 U. S. 548, 576; *Wetzel* v. *McNutt*, 4 F. Supp. 233 (S. D. Ind.), that the incumbent of a public office can have any kind of vested right in it other than such as may be secured by constitution or statute. Petitioner

upon this ground would leave untouched the cases of candidates not occupying such a position.[3] It would, in addition, introduce a discrimination in favor of incumbents as against aspirants to office which would be completely indefensible.

The present case cannot be decided without reference to the framework in which it arises and the implications that would flow from its decision.[4] Assuming that a decision in favor of the petitioner were placed upon the broad ground that the ordinary and necessary expenses of all candidates may be deducted, which is the only defensible ground from a policy standpoint upon which it could be based, it would nevertheless raise a host of problems to which it would provide no solutions.

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had no greater claim to be "continued" in his office beyond his term, and no greater warrant for spending money to achieve that end, than any other candidate had to secure his election.

[3] Such a decision would, also, raise numerous questions to which only a long course of litigation could supply answers, unless the problem were taken in hand by the legislature. What, for example, should be said of the expenditures of an official who sought election to a more desirable office? Would it make a difference whether the office being sought were of a different variety from the one already occupied? What would be the effect of an attempt to secure election to an office in a different unit of government? And so on.

[4] The only unusual factor in the petitioner's case is his promise to the Governor who appointed him that he would be a candidate at the next election (R. 416a). Such a promise is not an enforceable agreement and does not alter the terms upon which the promissor holds his office. In any event, it does not change the nature for tax purposes of the campaign expenditures which may later be made.

The question of what constituted "ordinary and necessary" campaign expenses for income tax purposes would constantly be presented to the Commissioner of Internal Revenue. With respect to States which, like Pennsylvania,[5] define the permissible categories of expenditures by statute, the Commissioner would no doubt be guided by the applicable legislative prescriptions; but as respects other States[6] he would be compelled to make rulings which it would be difficult for him to render and which would embroil his office in political controversy. He would also be required (*infra*, p. 28) to determine the income derived by candidates from contributions. Congress has refrained from requiring any such functions of him. It is inconceivable that it would do so without providing adequate statutory guides for him to follow.[7]

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[5] Election Code, sec. 1606, as amended, 25 Pa. Stat. Ann. (Purdon, Supp. 1944) sec. 3226, Petitioner's Brief, p. 37.

[6] According to a compilation of corrupt practices acts published in 1937 as S. Doc. No. 11, 75th Cong., 1st sess., 20 States at that time did not include an enumeration of permissible campaign expenditures in their statutes. The remaining 28 States did.

[7] It cannot be validly argued that the guidance which would be supplied by the words "ordinary and necessary" would be adequate, merely because these words have been relied upon for determining those expenditures of other varieties which are deductible for income tax purposes. Political expenditures are more directly fraught with a public interest than many others; they relate directly to government; and their character is better known to elected legislatures; and is of greater interest to them, than other types of expenses. The need of legislative guidance in dealing with them, whether for tax purposes or for others, is correspondingly greater.

The truth is that, as the Court knows, the problem relating to expenditures in election campaigns and to the sources of the funds expended has been an object of national interest and concern and a subject of recurring legislative study in Congress since 1904.[8] Such is the difficulty and complexity of the problem,[9] however, that Federal legislative

For the difficulty of reaching a decision on the propriety of campaign expenses, see, for example, Hearings before the Committee on Election of President, Vice President, and Representatives in Congress on H. J. Res. 139, etc., 67th Cong., 2d sess., pp. 14 *et seq.*; 67 Cong. Record, Part 11, p. 12475; *cf.* S. Res. No. 2, 70th Cong., 1st sess. (69th Cong. Record, Part 1, p. 337).

[8] James K. Pollock, *Party Campaign Funds* (1926), p. 7. Valuable Congressional hearings and reports with respect to the matter include the following:

Hearings before the Committee on Election of the President, etc., of the House of Representatives: Contributions to Political Committees in Presidential and Other Campaigns, 59th Cong., 1st sess.

Report of the House Committee on Election of the President, Vice President, and Representatives in Congress, H. Rep. No. 5082, 59th Cong., 1st sess.

Report of the Committee on Election of President, etc., to accompany H. Res. 256, H. Rep. No. 677, 63rd Cong., 2d sess.

Hearings before the Committee on Election of President, etc., of the House of Representatives, on H. J. Res. 139, etc., 67th Cong., 2d sess.

[9] Pollock, *op. cit.*, contains a good discussion of the numerous considerations which must enter into a solution to the problem that would (1) permit sufficient funds to be raised and expended, (2) guard against harmful types of campaign contributions and expenditures, and (3) insure adequate publicity. The discussion deals largely with party funds as distinguished from those raised and expended by individual candidates; but the two are of course closely related.

regulation has not gone beyond limited reuirements for publicity,[10] prohibitions upon certain types of political contributions,[11] and a limit upon the election expenditures of candidates for Congress.[12] State legislation, which has led the way in this field,[13] has proceeded somewhat farther in a number of States.[14] Most of the laws are merely restrictive, however, and the problem of the financial difficulties of candidates, to which petitioner calls attention, has received very little legislative treatment.[15]

Because of the same difficulties which have held back legislation dealing directly with election ex-

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[10] Corrupt Practices Act, 43 Stat. 1071, c. 368, Secs. 304–307, 2 U. S. C. Secs. 244–247.

[11] *Idem*, Sec. 313, as amended by 57 Stat. 167, c. 144, Sec. 9; 2 U. S. C., Supp. III, Sec. 251.

[12] *Idem*, Sec. 309, 2 U. S. C. Sec. 248. The limitation does not apply, however, to important types of necessary expenditures, which may be large in amount in populous States.

[13] Pollock, *op. cit.*, pp. 8–9, 12, 234–236.

[14] The State statutes summarized in S. Doc. No. 11, 75th Cong., 1st sess., footnote 16, *supra*, are in a number of instances quite comprehensive, embracing, in addition to the points covered in Federal legislation, the enumeration of permissible expenditures previously referred to and such matters as the composition and management of political committees, methods of soliciting funds, regulation of political advertising and certain other campaign practices, and specific requirements for the statements of expenditures required to be filed.

[15] State assistance in printing political advertising during campaigns is the only form of aid to candidates thus far attempted. Minault, *Corrupt Practices Legislation in the 48 States* (1942), p. 12. See Pollock, *op. cit.*, pp. 104–107. Much more extensive assistance has at times been envisaged. *Idem*, pp. 102–104, 108–109.

penditures, the Congress has so far refrained from making provision in the income tax laws for the deduction of campaign expenses from income.[16] It is worthy of note that, likewise, no state legislature has undertaken to make any such provision and that all reported rulings of state tax officials which have dealt with the topic have been to the effect that campaign expenditures are not deductible under the laws as they stand.[17]

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[16] *Infra*, pp. 22–28.

[17] *Alabama*. Op. Atty. Gen. Jul. 7, 1941; summarized, Ala. PH par. 11,470.11, *semble*.

Arizona. Regulations No. 1, Art. 562, Arizona PH par. 10,413; Arizona Code (1939) § 73–1510, Ariz. PH par. 12,141.

Iowa. Regulations, Art. 140, Iowa PH par. 10,465–Q; Iowa Code (1939) § 6943.041(1), Iowa PH § 12,053.

Kansas. Departmental Rulings of State Tax Commission, Rule 9, Kan. PH par. 16,813; Kan. Gen. Stat. (1935) § 79–3296 (a), (14), 3207 (a) (1), Kan. PH par. 12,005, 12,006.

Kentucky. Op. Atty. Gen. Oct. 30, 1941, summarized, Ky. PH par. 13,016; Ky. Rev. Stat. (1942) §§ 141.080 (1), 141.090 (1), Ky. PH pars. 12,585, 12,611.

Minnesota Regulations, Art. 14–1, *Minn.* PH par. 10,760; *Minn.* Stat. (Mason, 1927) § 2394–13 (a), 2394–14 (a), *Minn.* PH par. 12,161, 12,201.

New York. An opinion of the Attorney General, Oct. 30, 1939, summarized in N. Y. PH par. 55,830, held that campaign expenses are not incurred for the production of income represented by a salary attached to the office sought, but are personal expenses and not deductible. This holding was made under a statutory provision (Tax Law, § 360 (1), set forth in full in N. Y. PH par. 59,160) like that embodied in the 1942 amendment to the Federal law (Int. Rev. Code, Sec. 23 (a) (2), infra, Appendix A). The opinion had the effect of perpetuating the rule of nondeductibility early announced under statutory provisions like those of the Federal law be-

It is clear, therefore, that the problem to which petitioner points, of the deterrent effect of income taxation upon the willingness of candidates to come forward for elective offices, has not resulted in a modification in any American jurisdiction of the long-understood rule that campaign expenditures are not deductible from income for tax purposes. The complex nature of the still larger problem of regulating the raising and spending of campaign funds, to which the more limited tax problem relates, renders it unlikely that a solution to the latter will be attempted except by means of careful legislation. To interpret the existing tax laws as having made provision for the deduction of campaign expenditures from income would create difficulties hard to resolve, without benefit of legislative consideration or statutory guidance. That the pertinent statutory provisions are to the contrary, is the burden of the pages which follow.

II

THE TAXPAYER'S CAMPAIGN EXPENDITURES WERE NEITHER DEDUCTIBLE EXPENSES NOR A DEDUCTIBLE LOSS

It is a familiar principle that a taxpayer seeking a deduction has the burden of clearly showing

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fore the 1942 amendment. Ruling of the Income Tax Bureau, 1-27-22, summarized in N. Y. PH par. 55,830.

South Dakota. Regulations, Art. 2605, S. D. PH par. 10,580; S. D. Code (1939) §§ 57.2604 (1), 57.2605 (e1), S. D. PH par. 12,532, 12,544.

the existence of a right to that deduction under a specific provision of the statute. *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593; *White* v. *United States*, 305 U. S. 281, 292; *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440. We submit that the courts below were correct in holding that the present taxpayer has failed to sustain that burden.

As will appear, moreover, the questions of statutory interpretation here involved turn upon the meaning of phrases which have long appeared in the tax statutes and which have a legislative history known to tax authorities. These questions, therefore, although they present issues of law, *Commissioner* v. *Heininger*, 320 U. S. 467, involve issues which the Tax Court, "informed by experience and kept current with tax evolution and needs by the volume and variety of its work," has "special competence" to determine, with resulting "weight to * * * [its] decision." *Dobson* v. *Commissioner*, 320 U. S. 489, 502.

a. *The taxpayer's campaign expenditures were not expenses paid or incurred in carrying on a trade or business within the meaning of Section 23 (a) (1) (A).*

To establish that disbursements of his campaign fall within the provision of Section 23 (a) (1) (A) of the Internal Revenue Code (Appendix A, *infra*), the taxpayer must establish that they were "ordinary and necessary expenses paid or incurred * * * in carrying on any trade or

business." They must be directly relating to carrying on business (Sec., 19.23 (a)-1, Treasury Regulation 103 (Appendix A, *infra*); *Higgins* v. *Commissioner*, 312 U. S. 212) and outside the prohibition of Section 24 (a) (1) (Appendix A, *infra*) upon the deduction of "personal" expenses.

Admittedly the term "trade or business" includes the performance of the functions of a public office. Section 48 (d), Internal Revenue Code (Appendix A, *infra*). But plainly the taxpayer's contributions to the county fund and the direct expenses of his own campaign were incurred in seeking office, and not in performing any function of the office which he held.

Campaigning for nomination and election to public office does not constitute the carrying on of any trade or business. The functions of the office sought cannot be carried on, nor can there be any right to the emoluments thereof, until the electorate has signified its choice. Not all activities resulting in income constitute a trade or business (*Van Wart* v. *Commissioner*, 295 U. S. 112); and within the common understanding of the term (see *Welch* v. *Helvering*, 290 U. S. 111; *Commissioner* v. *Heininger*, 320 U. S. 467) candidacy is not a trade or business but simply a process whereby the candidate, and any supporters he may have, seek to persuade the electorate to vote the candidate into office. The candidate receives no compensation for being a candidate. It is true that, as in this case, the candidate normally re-

ceives "political gifts" intended to assist in the process of nomination and election;[18] but obviously securing contributions is not his business, and the contributions do not constitute income to the candidate.[19] Since being a candidate is not a busi-

[18] Complete statistics on the financial arrangements of a representative number of political campaigns are not available. Apparently the most nearly complete are those obtained in response to questionnaires sent out by a special committee of the Senate relating to the contributions and expenditures in the various senatorial races in primaries and in the general election in 1938. S. Rep. No. 1, 76th Cong., 1st Sess., pp. 4, 43, 45. With the exception of questionnaires sent to a few minor candidates and those sent to several candidates who either died or withdrew, all questionnaires were filled out and returned. *Idem*, p. 4. The information received is tabulated in Appendix V of the report, which shows that 212 candidates who participated in campaigns in 34 states reported total expenditures of $1,415,922.94 and total contributions of $1,078,862.83. Thus the average of reported expenditures by the candidates was $6,678.88, and the average of the reported contributions received was $5,089.08. These figures include sums received and spent both by the candidates themselves and by others with their knowledge and consent.

[19] I. T. 3276, 1939–1 Cum. Bull. 108. Earlier rulings were to the same effect, but were not published because it was believed that the matter was of insufficient general interest to warrant publication.

On the other hand, the contributions are not deductible by the contributors. I. T. 3276, *supra;* Sections 19.23 (o)–1 (Appendix A, *infra*) and 19.23 (q)–1, Treasury Regulations 103. Compare the rejection of the proposal made to embody in the Revenue Act of 1924 a provision requiring taxpayers to report political contributions in their income tax returns. 65 Cong. Record, Part 3, p. 2948; Part 4, p. 3271; Part 7, p. 6456.

If candidacy were regarded as a trade or business or profession, the contributions would constitute income to the

ness, the expenditures are not ordinary and necessary expenses of carrying on a business.

Campaign expenses fall under the prohibition of Section 24 (a) (1) upon the deduction of "personal" expenses. That prohibition is in addition to the prohibitions contained in the same section upon the deduction of "living" and "family" expenses, and extends beyond them. See *Kornhauser* v. *United States*, 276 U. S. 145, 152. One of its principal applications is to the expenses of the individual in preparing or qualifying himself for employment or for the practice of a profession. Thus it forbids the deduction of such expenses as those of securing training and education for gainful employment,[20] including the expenses of qualified practitioners in taking post-graduate courses to enhance their standing and skill,[21] fees for bar examinations and for admission to the bar, and similar expenses,[22] and expenses entailed in traveling to seek or enter upon employment.[23] Present regulations expressly prohibiting the de-

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candidate and should be deductible by those who participate through making them.

[20] *Darling* v. *Commissioner*, 4 B. T. A. 499, 503; cf. *Driscoll* v. *Commissioner*, 4 B. T. A. 1008. See also, *Welch* v. *Helvering*, 290 U. S. 111, 115–116.

[21] O. D. 892, 4 Cum. Bull. 209 (1921); O. D. 984, 5 Cum. Bull. 171 (1921). See also discussion, *infra*, pp. 24–25.

[22] O. D. 452, 2 Cum. Bull. 157 (1920); cf. *Tinkoff* v. *Commissioner*, 120 F. 2d 564 (C. C. A. 7th), extension of time for certiorari denied, 314 U. S. 581.

[23] S. M. 1048, 1 Cum. Bull. 101 (1919); O. D. 451, 2 Cum. Bull. 157 (1920); I. T. 1397, I–2 Cum. Bull. 145 (1922);

duction of such expenses, including campaign expenses (Sec. 19.23 (a)–15, Treasury Regulations 103, as amended (Appendix A, *infra*)), reflect earlier rulings and decisions. See O. D. 864, 4 Cum. Bull. 211, Appendix B, *infra*.[24] In general, the prohibition upon the deduction of "personal" expenses extends to all expenses which are merely preparatory to the acquisition of a gainful occupation.[25]

Sullivan v. *Commissioner*, 1 B. T. A. 93; cf. *Bixler* v. *Commissioner*, 5 B. T. A. 1181.

[24] There was no occasion for any broader ruling with respect to campaign expenditures than one applicable to Senators and Congressmen, since the salaries of state officials were not taxed prior to the Public Salary Tax Act of April 12, 1939, 53 Stat. 574, c. 59, Sec. 1. Expenses incident to the production of nontaxable income are not deductible. *Lyeth* v. *Commissioner of Internal Revenue*, 47 F. 2d 32 (C. C. A. 3); Sec. 24 (a) (5), Internal Revenue Code, 26 U. S. C., Supp. III, Sec. 24 (a) (5).

[25] *Cf. Tinkoff* v. *Commissioner*, *supra*, which denied a deduction for the expenses of seeking to expunge an order of the Treasury Department suspending the taxpayer from practice; and *Lloyd* v. *Commissioner*, 55 F. 2d 842 (C. C. A. 7th), which denied a business man a deduction for expenses of a suit against a person who had slandered his integrity.

Denny v. *Commissioner*, 33 B. T. A. 738, and *Hutchison* v. *Commissioner*, 13 B. T. A. 1187, relied upon by the taxpayer, afford him no support. In each case the taxpayer had contracted to render particular services, the performance of which necessitated maintaining physical fitness; the expenditures were made in so doing. Moreover, in *Evans* v. *Commissioner*, unreported memorandum opinion of the Board of Tax Appeals, dated March 8, 1939, cited by the taxpayer, an actress whose contract provided for her suspension in the event of physical disability was denied a deduction for medical expenses incurred at the direction of her employer. The

Expenditures of the character just described have sometimes been regarded as capital expenditures [*] and as such not deductible as business expenses. In fact the court below considered that the expenditures here were of that class. There is an analogy to capital expenditures in the sense that the hoped-for benefits will normally extend over a period of years or indefinitely, if actually realized, and the expenditures here may be disallowed for that reason; but we think the expenses of preparing for or seeking employment are most accurately characterized as personal expenses, which may not

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Board said that the doctrine of the *Hutchison* and *Denny* cases was limited to the particular facts therein considered. See also, *Sparkman* v. *Commissioner*, 112 F. 2d 774 (C. C. A. 9th). The taxpayer stresses allowance by the Board in the *Evans* case of travel expenses paid by the taxpayer-actress in sending her mother abroad for the purpose of negotiating a European contract for the actress. We think there is a great difference, however, between the case of an actress, whose business entails the constant negotiation of new contracts, and whose present employment frequently depends upon the demand by others for her future services, and a judge who comes up for election but once in ten years and whose existing employment is in no way affected by his prospects of future employment.

[*] Mr. Justice Cardozo stated for a unanimous Court in *Welch* v. *Helvering*, *supra*, pp. 115–116, that—

"Reputation and learning are akin to capital assets, like the good will of an old partnership. * * * For many, they are the only tools with which to hew a pathway to success. The money spent in acquiring them is well and wisely spent. It is not an ordinary expense of the operation of a business."

be deducted. Moreover, in so far as petitioner's expenditures consisted of contributions to the county fund, as distinguished from expenses directly incurred by the taxpayer, their deduction would seem to fall under the further express prohibition of Section 19.23 (o)–1 of Treasury Regulations 103 (Appendix A, *infra*).

We submit that candidates for public employment are not different from candidates for any other employment and that all of the campaign expenses here involved fall within the category of nondeductible expenses. Section 19.23 (a)–15, Treasury Regulations 103, as amended (Appendix A, *infra*) has correctly taken the position that the campaign expenses of a candidate for public office are not deductible.

A candidate who holds the expiring term and seeks election to the next term does not stand in a different position from a new aspirant. The fact of incumbency is clearly immaterial. Discharge of the duties of an existing term of office and the receipt of the emoluments thereof in no way require that the incumbent seek election to the next term. The taxpayer's argument would have this Court attribute to the Congress an intention to accord incumbents of elective offices, local, state, or Federal, special treatment with respect to the expenses of campaigning for nomination or election to succeed themselves. This would be at

striking variance with the fundamental assumption of the elective process that the law shall not discriminate between candidates in regard to their opportunities to present themselves to the electorate. Clear words would be required to produce such a result, and they are wanting. On the contrary, Congress has acquiesced in an administrative construction of the pertinent statutory provisions which has obtained for more than twenty-three years, to the effect that there may be no deduction for campaign expenses of any sort.

Shortly after the 1920 elections, the Bureau of Internal Revenue published a ruling that a Congressman could not deduct the expenses of his campaign which he himself defrayed, since they were "personal" expenses. O. D. 864, 4 Cum. Bull. 211 (1921) (Appendix B, *infra*). This ruling was plainly in accord with rulings as to candidates for other occupations and professions and seems clearly to have met with the approval of Congress.

In enacting the Revenue Act of 1921 several months later, Congress considered and adopted an amendment to the section dealing with business expenses. It had been ruled that the provision in the law as it then existed for the deduction of only "the ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business" did not permit deduction

of the total expenses of commercial travelers for meals and lodging while away from home." Specific provision was therefore made in the Revenue Act of 1921 for the deduction of such expenses.[28] The administrative ruling, recently published, that the expenses of seeking public office were not deductible, was in no way questioned at that time.[29] In numerous successive Revenue Acts, Congress reenacted the governing statutory provisions in terms identical with those of the 1921 Act.[30]

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[27] Article 292, Treasury Regulations 45, promulgated under the Revenue Act of 1918, as amended by T. D. 3101, 3 Cum. Bull. 191 (1920).

[28] Section 214 (a) (1) of the Revenue Act of 1921, c. 136, 42 Stat. 227, amending Section 214 (a) (1) of the Revenue Act of 1918, c. 18, 40 Stat. 1057. See statement of Congressman Hawley, 61 Cong. Record, Part 5, p. 5201; H. Rep. No. 350, 67th Cong., 1st Sess., p. 11 (1939–1 Cum. Bull. (Part 2) 168, 177); S. Rep. No. 275, 67th Cong., 1st Sess., p. 14 (1939–1 Cum. Bull. (Part 2) 181, 191).

[29] *Cf.* 61 Cong. Record, Part 7, pp. 6672–6673.

[30] Sections 214 (a) (1) and 215 (a) (1) of the Revenue Act of 1924, c. 234, 43 Stat. 253; Revenue Act of 1926, c. 27, 44 Stat. 9; Sections 23 (a) and 24 (a) (1) of the Revenue Act of 1928, c. 852, 45 Stat. 791; Revenue Act of 1932, c. 209, 47 Stat. 169; Revenue Act of 1934, c. 277, 48 Stat. 680; Revenue Act of 1936, c. 690, 49 Stat. 1648; Sections 23 (a) (1) and 24 (a) (1) of the Revenue Act of 1938, c. 289, 52 Stat. 447; and of the Internal Revenue Code. The language of Section 23 (a) (1) of the Internal Revenue Code was reenacted as Section 23 (a) (1) (A) by Section 121 of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1940 ed., Supp. III, Sec. 23), discussed *infra*, pp. 32–33.

The attitude of Congress toward broadening the scope of these provisions is further indicated by its deliberations upon the Revenue Acts of 1926 and 1928. Congress rejected a proposal to include in the Revenue Act of 1926 a provision that members of professions be allowed to deduct the expenses of attending professional meetings and the expenses of postgraduate courses taken to advance their professional standing.[31] A similar proposal was made in connection with the Revenue Act of 1928,[32] at a time when there was pending in the Board of Tax Appeals a case involving the campaign expenses of Senator David A. Reed. In 1922 Senator Reed, then a practicing lawyer, had successfully run on the Republican ticket for election as United States Senator from Pennsylvania, and had paid certain amounts to the State and county committees which were promoting the party ticket. He sought to deduct those amounts as expenses of carrying on a trade or business. He apparently did not attempt to deduct any other campaign expenses, nor, on the other hand, did he

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[31] Hearings before the Committee on Ways and Means on Revenue Revision, 1925, 69th Cong., 1st Sess., pp. 204–210; 67 Cong. Record, Part 3, pp. 3022–3023; Part 4, p. 3789.

[32] Hearings before the Committee on Ways and Means on Revenue Revision, 1927–1928, 70th Cong., 1st Sess., pp. 333–338; Hearings before the Committee on Finance on Revenue Act of 1928, 70th Cong., 1st Sess., pp. 135–152; Section 23 (a) of H. R. 1, 70th Cong., 1st Sess., as passed by the Senate; 69 Cong. Record, Part 8, pp. 9054–9056.

return as income any contributions received.[33] The Commissioner disallowed the claimed deduction. Despite the pendency of this case before the Board of Tax Appeals, no suggestion was made in Congress during the consideration of the Revenue Act of 1928 that the law be amended to allow the deduction of campaign expenses of any sort. The proposal which was made with respect to the members of professions was rejected, after extended consideration, on the ground that it would broaden to an indeterminate extent the scope of exemptions allowed under existing law.[34]

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[33] Senator Reed's income tax return was not put into the record, but the sole question litigated was that of the deductibility of the payments to party funds.

[34] 69 Cong. Record, Part 8, pp. 9053–9056; Part 10, p. 10133; H. Conference Rep. No. 1882, 70th Cong., 1st Sess., p. 11 (amendments 26, 27 and 28) (1939–1 Cum. Bull. (Part 2) 444, 445).

Shortly after the enactment of the 1928 Act, the Board of Tax Appeals held that a physician might deduct expenses incurred in attending a convention of a medical association of which he was a member. *Jaek v. Commissioner*, 13 B. T. A. 726. The Board had previously rendered similar decisions with respect to members of other professions. *Shutter* v. *Commissioner*, 2 B. T. A. 23; *Silverman* v. *Commissioner*, 6 B. T. A. 1328. The theory on which such expenses are held allowable is that they directly affect income from the profession. This is illustrated by *Ellis* v. *Commissioner*, 15 B. T. A. 1075, 50 F. 2d 343 (App. D. C.), in which a lawyer was allowed to deduct expenses incurred in attending a meeting of the American Bar Association, of which he was a member, but was not allowed to deduct the expenses of a trip to Europe as a member of a special committee of the

Shortly after the enactment of the 1928 Act, the Board of Tax Appeals announced its opinion in *Reed* v. *Commissioner*, 13 B. T. A. 513, reversed on another issue, 34 F. 2d 263 (C. C. A. 3d), reversed, 281 U. S. 699. The Board held against the deductibility of Senator Reed's payments to the party funds, on the ground that running for office is only preparatory to carrying on the business of discharging the duties of an office and is not part of the business itself. Senator Reed did not seek review of the Board's decision upon this issue, although he sought and obtained review of another and unrelated issue in the case. The statutory provisions involved were again reenacted in Sections 23 (a) and 24 (a) (1) of the Revenue Act of 1932, 47 Stat. 169, c. 209, without challenge to the rule that campaign expenses are not deductible. They were similarly reenacted in the Revenue Act of 1934, 48 Stat. 680, c. 277.

In the proceedings leading to the enactment of the Revenue Act of 1934, members of Congress expressed dissatisfaction with rulings by the Bureau of Internal Revenue that certain expenses incurred in the discharge of their functions, such as salaries paid out of their own pockets to extra clerks in their offices, could not be deducted. Ac-

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Association to secure first-hand information on criminal procedure and law enforcement, although it was recognized that this would enhance his professional standing.

cordingly it was proposed to enact a provision which would permit the deduction of such expenses. The proposal was expressly said to "have nothing to do" with campaign expenses.[35] The outcome was the enactment of a new provision defining the term "trade or business" to include "the performance of the functions of a public office." Section 48 (d) of the Revenue Act of 1934. The express limitation of this provision to the performance of the functions of the office itself clearly affirmed the existing rule that the expenses of seeking the office were not deductible. This, as well as the other statutory provisions in question, has been repeatedly reenacted without change.[36]

Lindsay v. *Commissioner*, 34 B. T. A. 840 (1936) was decided under the Revenue Act of 1932, which did not contain any provision defining "trade or business" as including the performance of the functions of a public office. The Board of Tax Appeals held that the expenses of an incumbent Congressman incurred in returning to his district to keep in touch with his constituents were expenses of a campaign for reelection and hence not deductible. While it may be doubted that such expenses would be regarded as cam-

[35] Hearings before the Committee on Finance, 73d Cong., 2d Sess., on H. R. 7835, Part 1, March 6, 1934, p. 29.

[36] See Sec. 48 (d) of the Revenue Acts of 1936 and 1938 and of the Internal Revenue Code (26 U. S. C. 1940 ed., Sec. 48). See also footnote 12, *supra*.

paign expenses under Section 48 (d) as amended in 1934, the case remains authority for the proposition that the expenses of a campaign for reelection, like the expenses of campaigning for election for the first time, are not deductible.

We think it plain that under the usual canons of statutory interpretation the long-standing administrative construction of the statute by the Commissioner, and the implied approval thereof by Congress, must be given effect in this case. *White* v. *Winchester Club*, 315 U. S. 32; *Helvering* v. *Griffiths*, 318 U. S. 371.

If, as the taxpayer contends, running for office constitutes the carrying on of a trade or business, contributions made to help defray the campaign expenses of the candidate would normally constitute income to him; for they would be "gains, profits, and income derived from * * * the transaction of * * * [a] business carried on for gain or profit, or gains or profits and income derived from" a definite source (Internal Revenue Code, Sec. 22 (a), 26 U. S. C. Sec. 22 (a), rather than gifts not connected with a business (*Idem*, Sec. 22 (b) (3).[37] *Cf.* Section 19.22 (a)–2, Treasury Regulations 103; *United States* v. *Sullivan*, 274 U. S. 259. In the present case the taxpayer defrayed part of his campaign expenses from money contributed to him for that purpose (R. 30a). Although he sought to deduct the en-

[37] See fn. 19, p. 17, *supra*.

tire amount of the campaign expenses, he did not return the money contributed as income (R. 105a, 29a). Consistently with his determination that the campaign expenses were not deductible, the Commissioner has not asserted that the money contributed was income (R. 8a–9a).

b. *The taxpayer's campaign expenditures were not deductible as expenses paid or incurred for the production or collection of income within the meaning of Section 23 (a) (2).*

Enactment of Section 23 (a) (2) (Appendix A, *infra*) by Section 121 of the Revenue Act of 1942, 56 Stat. 798, upon which the taxpayer relies alternatively, adds nothing to his case. The salary of the term of office to which he sought election was unquestionably business income, and any expense properly deductible because it was incurred in earning such income would be deductible independently of the enactment of Section 23 (a) (2). The latter section adds nothing to the grounds upon which business expenditures may be deducted; the issue remains whether petitioner's campaign expenses fall in this category.

The 1942 amendment rendered deductible a category of expenditures, entered into for the production of income or the management, conservation, or maintenance of property held for the production of income, which this Court had determined not to be business expenses and therefore not deductible under the previous statute

Van Wart v. *Commissioner*, 295 U. S. 112; *Higgins* v. *Commissioner*, 312 U. S. 212. The purpose of the amendment is clear from its legislative history. It was simply and solely to change the rule, which was thought to be inequitable, that expenses incurred in the production of taxable nonbusiness income, which were of the same variety as deductible business expenses, could not be deducted. The amendment did not enlarge the concept of trade or business or expand the category of business expenses, nor did it create a vague new category of deductible expenditures which would in effect have amended the express prohibition of Section 24 (a) (1) upon the deduction of "personal" expenses.

Had Congress intended to provide for the deduction of personal expenses incident to an attempt to acquire a status which, if acquired, would lead to the earning of business income, it would have given the matter explicit consideration and would have used words appropriate to that end, amending the provision for deduction of business expenses. That Congress had no such intention is confirmed by the history of the 1942 amendment.

Before the decision of this Court in *Higgins* v. *Commissioner*, 312 U. S. 212, it was debatable whether the category of business expenses included the expenses of producing taxable income from property and investments. The Bureau of Internal Revenue had ruled in 1934, as a result of lower court decisions, that business expenses did

include "all the ordinary and necessary expenses paid or incurred in the production of taxable income," [38] such as the costs of bookkeeping, stenographic work, office and safety vault rent, and fees paid to attorneys.[39] In *Van Wart* v. *Commissioner*, 295 U. S. 112 (1935), this Court sustained the Commissioner of Internal Revenue in denying the deductibility of an attorney's fee for conducting litigation to secure taxable income from a trustee who was withholding it. In 1938 a subcommittee of the House Ways and Means Committee recommended that provision be made to allow deductions for expenses such as those involved in the *Van Wart* case.[40] The recommendation was not adopted in the 1938 Act, and the matter rested until after the decision of the *Higgins* case. In that case this Court expressly held counter to the rulings of the Bureau stated above, in so far as they related to the expenses of managing investments in securities. The decision was placed solely upon the ground that an individual's activities in managing such investments did not constitute the carrying on of a trade or business and that, consequently, no basis existed for permitting their deduction.

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[38] I. T. 2751, XIII-1 Cum. Bull. 43, 44 (1934).

[39] See rulings cited in *Higgins* v. *Commissioner*, *supra*, p. 215, note 11.

[40] Report of Subcommittee, Committee on Ways and Means, Revenue Revision, 75th Cong. 3rd Sess., pp. 46–47.

As a result of the *Higgins* decision, the Treasury Department recommended the enactment in the Revenue Act of 1942 of a provision for the deduction of expenses for the production of nonbusiness income.[41] Taxpayer interests suggested that the proposal be changed to cover expressly the expenses of management and conservation of property held for the production of income.[42] The adoption of this suggestion confirmed the administrative construction of the previous law, which this Court recognized as correct in the *Higgins* case, 312 U. S. at p. 214, that the expenses of managing investments in real property were deductible, and also rendered more explicit the authorization for deducting the expense of managing investments in securities. As enacted, therefore, the amendment has two provisions which respond, respectively, to the decisions in the *Van Wart* and *Higgins* cases. Section 23 (a) (2), Internal Revenue Code (Appendix A, *infra*.)

The committee reports on the 1942 amendment expressly state that the deduction of expenses for the production of nonbusiness income is subject to all the restrictions and limitations that apply in the case of a deduction for business expense, except for the requirement of being incurred in

[41] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 1, p. 88; Hearings before Committee on Finance on Revenue Act of 1942, 77th Cong., 2d Sess., p. 50.

[42] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 3, p. 2763.

connection with a trade or business. H. Rep. No. 2333, 77th Cong., 2d Sess., p. 75 (Appendix B, *infra*); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 88 (Appendix B, *infra*). The amendment was regarded by its proponents as filling a gap, disclosed by the decisions to exist, between the categories of business expenses and personal expenses; and these categories would not be affected by it.[43] The regulations issued under the 1942 amendment shortly after its enactment adopt this view and, therefore, expressly negative the deductibility of the campaign expenses of candidates for public office. Section 19.23 (a)–15 of Treasury Regulations 103, as added by T. D. 5196, 1942–2 Cum. Bull. 96 (Appendix A, *infra*). Court decisions under the 1942 amendment have uniformly held that it did not restrict the scope of the prohibition of Section 24 (a) (1) upon the deduction of the "personal" expenses which have been involved in the cases. *Amerise* v. *Commissioner,* 1 T. C. 1108; *Levy* v. *Commissioner,* decided December 17, 1942 (P–H T. C. Memorandum Decisions, par. 42,645); cf. *Bowers* v. *Lumpkin,* 140 F. 2d 927 (C. C. A. 4), certiorari denied May 29, 1944; *Helvering* v. *Stormfeltz* (C. C. A. 8), decided June 3, 1944 (1944 P–H, par. 62,597).

c. *The taxpayer's campaign expenditures did not constitute a deductible loss under Section 23 (e).*

[43] Hearings before Committee on Ways and Means on Revenue Revision, 1942, 77th Cong., 2d Sess., Vol. 3, p. 2802.

The taxpayer sustained no loss deductible under the provisions of Section 23 (e) of the Internal Revenue Code (Appendix A, *infra*), relating to losses sustained in trade or business or transactions entered into for profit. The loss provisions do not apply to all out-of-pocket disbursements for which the taxpayer receives no immediate tangible benefit. *Kornhauser* v. *United States*, 276 U. S. 145, 152. The taxpayer did not lose the expenditures here in question or fail wholly to derive advantage from them; he engaged in making them, and he received resulting benefits, even if not all that he hoped for. As we have shown, the expenditures were "personal" expenses. Section 24 (a) (1) of the Internal Revenue Code forbids the deduction of such expenses "in any case," and they may not be deducted in the guise of a loss. *Driscoll* v. *Commissioner*, 4 B. T. A. 1008; 5 Mertens, *Law of Federal Income Taxation* (1942), Section 28.45.

The taxpayer assumes that since he lost the election, all that he spent to win it was necessarily lost. That assumption is in no way supported by proof, and indeed is contrary to common experience. One who comes as close to election as did the taxpayer normally gains from the contest personal and political standing of great although usually unmeasurable value. Deductions may be taken only for losses not compensated "by insurance *or otherwise*" (italics supplied). Section 23 (e), Internal Revenue Code.

The taxpayer has failed to give any consideration to the "salvage value" of his undertaking, as required by the applicable regulation. Section 19.23 (e)–1, Treasury Regulations 103. He therefore is entitled to no deduction for a loss. *Cf. Crowley* v. *Commissioner,* 89 F. 2d 715 (C. C. A. 6th); *Coalinga-Mohawk Oil Co.* v. *Commissioner,* 64 F. 2d 262 (C. C. A. 9th), certorari denied, 290 U. S. 637; *Schuman Piano Co.* v. *Commissioner,* 10 B. T. A. 118; *Lawrence & Co.* v. *Commissioner,* 1 B. T. A. 1202.

In any event the taxpayer is in error in asserting a loss to the extent that the expenses claimed as a loss were met from money contributed to him for the campaign. From the standpoint of the legislative problem to which the taxpayer calls attention, moreover, a deduction based upon the loss theory would result in a manifest absurdity, for it would permit campaign expenses to be deducted by a losing candidate but not by one who was successful in the election. This form of discrimination is itself a strong reason for the conclusion that Section 23 (e) of the Internal Revenue Code has no application to the case of a candidate for elective office.

III

THE TAX COURT DID NOT ERR IN EXCLUDING EVIDENCE AND IN MAKING FINDINGS OF FACT

The taxpayer's assignment of error in these regards (Pet. 5) apparently relates to the ques-

tion whether the expenses in question were "ordinary and necessary" in the sense of being essential expenses of common occurrence in political campaigns. For reasons stated at length above, we believe that no expenses of a political campaign are deductible, however ordinary and necessary they may be according to the standards laid down in cases such as *Welch* v. *Helvering*, 290 U. S. 111, and *Deputy* v. *duPont*, 308 U. S. 488. In our view it is therefore unnecessary to consider this assignment of error.

CONCLUSION

The judgment below should be affirmed. If, however, this Court should be of the contrary opinion, the case should be remanded for further proceedings to determine the effect upon the taxpayer's liability of the contribution received and used by the taxpayer to defray part of the expenses sought to be deducted.

Respectfully submitted.

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OCTOBER 1944.

APPENDIX A

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [as amended by Section 121 of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or Business Expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *.

(2) *Non-Trade or Non-Business Expenses.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

* * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction en-

tered into for profit, though not connected with the trade or business; * * *.

* * * * * *

(26 U. S. C. 1940 ed., Sec. 23.)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses; * * *

* * * * * *

(26 U. S. C. 1940 ed., Sec. 24.)

SEC. 48. DEFINITIONS.

When used in this chapter—

* * * * * *

(d) *Trade or Business.*—The term "trade or business" includes the performance of the functions of a public office. (26 U. S. C. 1940 ed., Sec. 48.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.23(a)-1. *Business expenses.*—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business. * * *.

SEC. 19.23(a)-5. *Professional expenses.*—A professional man may claim as deductions the cost of supplies used by him in the practice of his profession, expenses paid in the operation and repair of an automobile used in making professional calls, dues to professional societies and subscriptions to professional journals, the rent paid for office rooms, the cost of the fuel, light, water, telephone, etc., used in such offices, and the hire of office assistants. Amounts

currently expended for books, furniture, and professional instruments and equipment, the useful life of which is short, may be deducted.

SEC. 19.23(a)–15. [as added by T. D. 5196, 1942–2 Cum. Bull. 96.] *Nontrade or nonbusiness expenses.*—

* * * * * *

(b) Except for the requirement of being incurred in connection with a trade or business, a deduction under this section is subject to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business. This includes restrictions and limitations contained in section 24, as amended. * * *

Capital expenditures, and expenses of carrying on transactions which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses. * * *

Among expenditures not allowable under section 23 (a) (2) are the following: Commuters' expenses; * * * expenses in seeking employment or in placing oneself in a position to begin rendering personal services for compensation, campaign expenses of a candidate for public office, bar examination fees and other expenses incurred in securing admission to the bar, and corresponding fees and expenses incurred by physicians, dentists, account-

ants, and other taxpayers for securing the right to practice their respective professions.

* * * * * *

SEC. 19.23(o)–1. *Contributions or gifts by individuals.*—

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* * * contributions for campaign expenses, are not deductible from gross income.

* * * * * *

APPENDIX B

S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 87–88:

SECTION 121. *Non-trade or Non-business Deductions*

This section is the same as section 118 of the House bill, except that subsections (c) of that section has been omitted therefrom and now appears as section 163 and a clerical amendment has been made in subsection (b). The amendment made by this section allows a deduction for the ordinary and necessary expenses of an individual paid or incurred during the taxable year *for the production and collection of income, or for the management, conservation, or maintenance of property held by the taxpayer for the production of income,* whether or not such expenses are paid or incurred in carrying on a trade or business, and also allows a deduction for the exhaustion and wear and tear (including a reasonable amount for obsolescence) on property held for the production of income, whether or not such property is used by the taxpayer in a trade or business.

For an expense to be deductible under this section, it must have been incurred either (1) for the production or collection of income, or (2) for the management, conservation, or maintenance of property held for the production of income. Ordinary and necessary expenses so paid or incurred are deductible under section 23 (a) (2) even though they are not paid or incurred

for the production or collection of income of the taxable year or for the management, conservation, or maintenance of property held for the production of such income. The term "income" for this purpose comprehends not merely income of the taxable year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years, and is not confined to recurring income but applies as well to gain from the disposition of property. Expenses incurred in managing or conserving property held for investment may be deductible under this provision even though there is no likelihood that the property will be sold at a profit or will otherwise be productive of income, and even though the property is held merely to minimize a loss with respect thereto. The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as non-trade or non-business expenses.

Expenses, to be deductible under section 23 (a) (2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an

expense paid or incurred in carrying on any trade or business. * * *

* * * * *

H. Rep. No. 2333, 77th Cong. 2d Sess., pp. 74–75:

SECTION 118. *Non-trade or Non-business deductions.*

This amendment allows a deduction for the ordinary and necessary expenses of an individual paid or incurred during the taxable year for the production and collection of income, or for the management, conservation, or maintenance of property held by the taxpayer for the production of income, whether or not such expenses are paid or incurred in carrying on a trade or business, and also allows a deduction for the exhaustion and wear and tear (including a reasonable amount for obsolescence) on property held for the production of income, whether or not such property is used by the taxpayer in a trade or business.

For an expense to be deductible under this section, it must have been incurred either (1) for the production or collection of income, or (2) for the management, conservation, or maintenance of property held for the production of income. Ordinary and necessary expenses so paid or incurred are deductible under section 23 (a) (2) even though they are not paid or incurred for the production or collection of income of the taxable year or for the management, conservation, or maintenance of property held for the production of such income. The term "income" for this purpose comprehends not merely income of the taxable year but also income which the taxpayer has realized in a prior taxable year or may realize in subsequent taxable years, and is

not confined to recurring income but applies as well to gain from the disposition of property. Expenses incurred in managing or conserving property held for investment may be deductible under this provision even though there is no likelihood that the property will be sold at a profit or will otherwise be productive of income. The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses.

Expenses, to be deductible under section 23 (a) (2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business.

* * * * * *

O. D. 864, 4 Cum. Bull. 211 (1921):

The expenses incurred by a Congressman in making trips of a personal nature are personal expenses which are not deductible. Any excess of mileage allowance over the actual expenses for railroad fares in mak-

ing trips for which such an allowance is made should be returned as income. Expenditures for meals and lodging incurred by a Member of Congress in coming to and returning from the sessions of Congress, in excess of any expenditures ordinarily required for such purposes when at home, are deductible.

If a Congressman brings his wife or other members of his family with him their traveling expenses are personal expenses which are not deductible.

If a Congressman makes a trip to or from Washington on official business by rail or otherwise, for example, by automobile, the actual expenses in excess of the expenditures ordinarily required for meals and lodging while at home are deductible provided he made the trip alone. If accompanied by one or more persons, his share of the cost of transportation, and the excess cost of his meals and lodging over their cost if he were home, are deductible.

Inasmuch as Congress is in session the greater part of each year, it is held that a Member of Congress living in Washington during the sessions of Congress, is not during that time on a business trip within the meaning of article 292, Regulations 45, as amended by Treasury Decision 3101, and that his living expenses in excess of the ordinary living expenses if at home are not deductible as a business expense.

Campaign expenses defrayed by a Congressman are not ordinary and necessary expenses incurred in carrying on a trade or business, within the meaning of the statute. Such expenses are held to be personal expenses which are not deductible.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 36.—October Term, 1944.

Michael F. McDonald, Petitioner, vs. Commissioner of Internal Revenue. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 20, 1944.]

Mr. Justice Frankfurter announced the conclusion and judgment of the Court, and an opinion in which the Chief Justice, Mr. Justice Roberts and Mr. Justice Jackson concur.

This is a controversy concerning a deficiency in petitioner's income tax for 1939.

In December 1938, the Governor of Pennsylvania appointed petitioner to serve an unexpired term as Judge of the Court of Common Pleas of Luzerne County. Under Pennsylvania law such an interim judgeship is filled for a full term at the next election. McDonald accepted this temporary appointment with the understanding that he would contest both the primary and general elections. To obtain the support of his party organization he was obliged to pay to the party fund an "assessment" made by the party's executive committee against all of the party's candidates. The amounts of such "assessments" were fixed on the basis of the total prospective salaries to be received from the various offices. The salary of a common pleas judge was $12,000 a year for a term of ten years, and the "assessment" against petitioner was fixed at $8,000. The proceeds from these "assessments" went to the general campaign fund in the service of the party's entire ticket. In addition to this political levy, McDonald also spent $5,017.27 for customary campaign expenses—advertising, printing, travelling, etc. The sum of these outlays, $13,017.27, McDonald deducted as a "reelection expense". The Commissioner of Internal Revenue disallowed the item and notified him of a deficiency of $2,506.77.

In appropriate proceedings before the Tax Court of the United States that Court sustained the Commissioner, 1 T. C. 738, and its decision was affirmed by the Circuit Court of Appeals for the Third Circuit. 139 F. 2d 400. We brought the case here, 321

U. S. 762, to give a definitive judicial answer to an important problem in the administration of the federal income tax.

What class of outlays may, in relation to the federal income tax, be deducted from gross income and in what amount are matters solely for Congress. Our only problem is to ascertain what provisions Congress has made regarding such expenditures as those for which the petitioner claims the right of deduction. The case is not embarrassed by any entanglement with corrupt practices legislation either state or federal.

The materials from which must be distilled the will of Congress are the following provisions of the Internal Revenue Code: § 23 (a) (1) (A); 56 Stat. 798, 819, 26 U. S. C. § 23 (a) (1) (A) (Supp. 1943), in connection with § 24 (a) (1), 26 U. S. C. § 24 (a) (1), and § 48 (d), 26 U. S. C. § 48 (d); § 23 (e) (2), 26 U. S. C. § 23 (e) (2); § 23 (a) (2) as amended by § 121 of the Revenue Act of 1942, 56 Stat. 798, 819.

"All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" are allowed by § 23 (a) (1) (A) as deductions in computing net income. According to tax law terminology (§ 48 (d) of the Internal Revenue Code) the performance by petitioner of his judicial office constituted carrying on a "trade or business" within the terms of § 23 of the Internal Revenue Code. He was therefore entitled to deduct from his gross income all the "ordinary and necessary expenses" paid during 1939 in carrying on that "trade or business". He could, that is, deduct all expenses that related to the discharge of his functions as a judge. But his campaign contributions were not expenses incurred in being a judge but in trying to be a judge for the next ten years. That is as true of the money he spent more immediately for his own reelection as it is of the "assessment" he paid into the party coffers for the success of his party's ticket. The incongruity of allowing such contributions as expenses incidental to the means of earning income as a judge is underlined by the insistence that payment of the "assessment" levied by the party as a prerequisite to being allowed to be a candidate is deductible as a "business" expense. If such "assessments" for future acquisition of a profitable office are part of the expenses in performing the functions of that office for the taxable year, then why should not the same deduction be allowed for "assessment" against office holders not candidates for imme-

diate reappointment or reelection but who pay such "assessments" out of party allegiance mixed or unmixed by a lively sense of future favors?

In order to disallow them we are not called upon to find that petitioner's outlays come within the prohibition of § 24 of the Internal Revenue Code in that they constituted "Personal . . . expenses". "Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed". *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440. For these campaign expenses to be deductible, it must be found that they can conveniently come with § 23 (a) (1) (A). To put it mildly, that section is not a clear provision for such an allowance. To determine allowable deductions by the different internal party arrangements for bearing the cost of political campaigns in the forty-eight states would disregard the explicit restrictions of § 23 confining deductible expenses solely to outlays in the efforts or services — here the business of judging — from which the income flows. Compare *Welch* v. *Helvering*, 290 U. S. 111, 115-116.

Petitioner next insists that inasmuch as he was defeated for reelection his campaign expenses constitute a loss incurred in a "transaction entered into for profit" and as such a deductible allowance by virtue of § 23 (e) (2).[1] Such an argument does not deserve more than short shrift. It suffices to say that petitioner's money was not spent to buy the election but to buy the opportunity to persuade the electors. His campaign contribution was not an insurance of victory frustrated by "an act of God" but the price paid for an active share in the hazards of popular elections. To argue that the loss of the election proves that the expense incurred in such election is a deductible "loss" under § 23 (e) (2) is to play with words.

Finally, reliance is placed on an amendment to the Internal Revenue Code, introduced by § 127 of the Revenue Act of 1942, 56 Stat. 798, 819.[2] This amendment was proposed by the Treasury

[1] "*Losses by individuals.* — In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise . . . if incurred in any transaction entered into for profit, though not connected with the trade or business."

[2] "*Non trade or non business expenses.* — In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

1 Hearings before Committee on Ways and Means, Revenue Revision, 1942, 77th Cong., 2d Sess., p. 88; "to afford relief for a specifically defined inequitable situation which had become manifest by the decision of the Court in *Higgins* v. *Commissioner*, 312 U. S. 212. In that case this Court held that by previous enactments Congress had made no provision for allowable deductions from profitable transactions not covered by the statutory concept of "business" income. But of course earnings from "the performance of the functions of a public office" had specifically been so covered. § 48 (d).[3] Congress adopted the Treasury proposal for the restricted purpose which originated it. And so here the difficulty is not that petitioner's expenditures related to "non-business" income, and thus were excluded from the legislative scheme before the 1942 Amendment, but that they were not incurred in "carrying on" his "business" of judging. The amendment of 1942 merely enlarged the category of incomes with reference to which expenses were deductible. It did not enlarge the range of allowable deductions of "business" expenses. In short, the act of 1942 in no wise affected the disallowance of campaign expenses as consistently reflected by legislative history, court decision, Treasury practice and Treasury regulations.[4] Nothing whatever in the circumstances attending the adoption of § 121 of the Revenue Act of 1942 warrants the suggestion that Congress unwittingly initiated a radical change of policy regarding campaign expenditures. Every relevant item of evidence bearing upon the history of this amendment precludes the inference that the Treasury without intent and the Congress without appreciation opened wide the door for the allowance of campaign expen-

[3] "*Trade or business.*—The term 'trade or business' includes the performance of the functions of a public office." This amendment, added by the Revenue Act of 1934, 48 Stat. 680, 696, was merely "declaratory of existing law". S. Rep. No. 558, 73d Cong., 2d Sess., p. 29. It had "nothing to do" with campaign expenses. 1 Hearings before Committee on Finance on H. R. 8245, 73d Cong., 2d Sess. (March 6, 1934), p. 29, which continued to be outside deductions allowed by § 23 (a) (1).

[4] "A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23 (a) (1) (A) of an expense paid or incurred in carrying on any trade or business". H. Rep. No. 2333, 77th Cong., 2d Sess., p. 45; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 88.

[5] *Reed* v. *Commissioner*, 13 B. T. A. 513, reversed on another ground, 34 F. 2d 283; reversed sub nom. *Lucas* v. *Reed*, 281 U. S. 699; Treas. Reg. 103, § 19.23 (a)-15; Treas. Reg. 103, § 29.0-3; O. D. 864, 4 Cum. Bull. 211 (1921).

ditures as deductible expenses. It surely is not fair to attribute to Congress the reversal of its policy and the enactment of a far-reaching new policy in the absence of any evidence, however tenuous or speculative, that Congress was legislating on the subject.

It is not for this Court to initiate policies as to the deduction of campaign expenses. It is for Congress to determine the relation of campaign expenditures to tax deductions by candidates for public office, under such circumstances and within such limits as commend themselves to its judgment. But we certainly cannot draw intimations of such a policy from legislation by Congress increasingly restrictive against campaign contributions and political activities by government officials. The relation between money and politics generally—and more particularly the cost of campaigns and contributions by prospective officeholders, especially judges—involves issues of far-reaching importance to a democracy and is beset with legislative difficulties that even judges can appreciate. But these difficulties can neither be met nor avoided by spurious interpretation of tax provisions dealing with allowable deductions.

To find sanction in existing tax legislation for deduction of petitioner's campaign expenditures would necessarily require allowance of deduction for campaign expenditures by all candidates, whether incumbents seeking reelection or new contenders. To draw a distinction between outlays for reelection and those for election to allow the former and disallow the latter is unsupportable on reason. It is even more unsupportable in public policy to derive from what Congress has thus far enacted a handicap against candidates challenging existing office holders. And so we cannot recognize petitioner's claim on the score that he was a candidate for reelection.[6]

Even if those conclusions, in the setting of federal income tax legislation, derived less easily than they do from the statutory provisions under scrutiny, we should not be inclined to displace the views of the Tax Court with our own.[7] Of course the Tax Court cannot define the limits of its own authority. And in cases like *Commissioner* v. *Heininger*, 320 U. S. 467, where the Tax

[6] In the interest of accuracy, it is to be pointed out that petitioner was not a candidate for reelection; he was a candidate for election for the first time.

[7] That the Tax Court may, as is sometimes true even of other courts, indulge in needless and erroneous observation is beside the point. See Helvering v. Gowran, 302 U. S. 238, 245-246.

Court mistakenly felt itself bound by superior judicial authority, we must give corrective relief. But, as a system, tax legislation is not to be treated as though it were loose talk or presented isolated abstract questions of law casting upon the federal courts the task of independent construction. Tax language normally has an enclosed meaning or has legitimately acquired such by the authority of those specially skilled in its application. To speak of tax determinations made in the system of review specially designed for federal tax cases as technical is not to imply opprobrium.

Having regard to the controversies which peculiarly call for this Court's adjudication and to the demands for their adequate disposition, as well as to the exigencies of litigation generally, relatively few appeals from Tax Court decisions can in any event come here. That court of necessity must be the main agency for nationwide supervision of tax administration. Whatever the statutory or practical limitations upon the exercise of its authority, Congress has plainly designed that tribunal to serve, as it were, as the exchequer court of the country. Due regard for these considerations is the underlying rationale of *Dobson* v. *Commissioner*, 320 U. S. 489. We are therefore relieved from discussing the numerous cases in which the Tax Court or its predecessor, the Board of Tax Appeals, allowed or disallowed deductions and their bearing on the situation before us. To do so involves detailed analysis of the special circumstances of various "businesses" and expenses incident to their "carrying on". We shall not enter this quagmire of particularities.

Affirmed.

Mr. Justice BURTON concurs in the result.

Mr. Justice BLACK, dissenting.

Petitioner, a lawyer of many years' experience, gave up his practice and accepted appointment as a judge upon condition that he run to succeed himself. In campaigning for reelection he incurred certain campaign expenses. These expenses, according to the Circuit Court of Appeals were "legitimate in their entirety", and "the objective of the expenditures was to obtain a considerable amount of money, over at least a decade of years."

This Court has not reached a contrary conclusion. For our purpose, therefore, we may consider that the expenses were incurred, at least in part, "for the production . . . of income." The literal language of Section 121 of the Revenue Act of 1942, 56 Stat. 798, 819, is broad enough to allow a deduction for expenses so incurred. That statute, which Congress made applicable retroactively, allows the following deductions in computing net income:

"In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

Prior to the enactment of this section, taxpayers in computing net income were not allowed deductions from gross income for expenses incurred unless they were "ordinary and necessary expenses paid or incurred . . . in carrying on a trade or business." Congress, by this new section, introduced a new type of deduction, for as the House and Senate Committees said, it allowed ". . . a deduction for the ordinary and necessary expenses of an individual paid or incurred . . . for the production and collection of income . . . ." Before the 1942 Act, an expense to be deductible had to be "ordinary and necessary" in its relationship to the taxpayer's business; under the new section it need only be "ordinary and necessary" in its relationship to the taxpayer's efforts to produce income. Hence, while the words "ordinary and necessary expenses", defining permissible deductions, remained unchanged in the new section, they were given added content in their new relationship. Obviously, Treasury regulations and decisions, limiting the scope of "ordinary and necessary" as applied to business expenses under the old law may be wholly unsuited to define the meaning of these words in their new context, and such rulings and decisions can throw little if any light on the meaning of Section 121. Since the enactment of the new section the two questions essential to determination of deductibility are: Were the expenses incurred in an effort to produce income? Were these expenses, or part of them, "ordinary and necessary" in connection with that effort? These are in most instances pure questions of fact and in cases such as this are to be determined by the tax court. See *Commissioner* v. *Heininger*, 320 U. S. 467, 475. The Tax Court did not make findings of fact on these crucial issues, but categorically denied that campaign expenses could be deducted at all. This, I think, was an erroneous interpretation of Section 121.

The 1942 Act articulated the purpose of Congress to wipe out every vestige of a policy which denied tax deductions for legitimate expenses incurred in producing taxable income. Taxation on net, not on gross, income has always been the broad basic policy of our income tax laws. Net income may be defined as what remains out of gross income after subtracting the ordinary and necessary expenses incurred in efforts to obtain or to keep it. In 1941, this Court upheld in *Higgins* v. *Commissioner of Internal Revenue*, 312 U. S. 212, a finding of the Board of Tax Appeals that one who managed, conserved and maintained his own property was not engaged in a "trade or business" and for this reason was not entitled to deduct expenses incurred in producing his gross income. The effect of this holding was to impair the general Congressional policy to tax only net income. Congress in its Revenue Act of 1942, *supra*, took note of this impairment and indicated in a most forthright manner its allegiance to the net income tax policy. Except for transactions carried on "primarily as a sport, hobby, or recreation," see Senate and House Committee Reports, *supra*, Congress provided a deduction for all ordinary and necessary expenses incurred in the production of income. The language it utilized was certainly far broader than was required to meet the narrow problem presented by the *Higgins* case. Congress specifically disposed of the *Higgins* problem by allowing a deduction for the expenses incurred in "... the management, conservation or maintenance of property held for the production of income." Had Congress simply enacted these words and nothing more, it might properly have been inferred that it intended to grant the type of deduction denied in the *Higgins* case, and no other. But it provided an additional deduction, in the very same section, for expenses incurred "in the production ... of income." To hold, therefore, that Congress in this new section was concerning itself only with the restricted issue created by the *Higgins* case, is to deny any meaning or validity to this latter clause; in a larger sense, such a construction carves out of the section a vital segment which Congress intentionally — so we must assume — put there.

The Court interprets Section 23(a)(1)(A) as not permitting the deductions, without denying that the expenditures were made by petitioner for "the production of income". This interpretation rests in part on the conclusion that the Section in no wise applies to expenses incurred in "business", and that the deduction

claimed by the petitioner were in relation to a "business" explicitly so denominated by § 48(d).[10] The Court's construction would appear to be quite different from that of the House and Senate committees which reported their construction of the measure to their respective bodies. The reports expressly stated that "The Amendment . . . allows a deduction for the ordinary and necessary expenses of an individual incurred during the taxable year for the production and collection of income . . . whether or not such expenses are incurred in carrying on a trade or business." We cannot question the special competence of these two committees to interpret their own legislation. Congress therefore apparently intended to obliterate the legal niceties of the "trade or business" distinction, insofar as they affected deductions for expenses incurred in the "production and collection of income."

The Court's decision is also grounded upon its reference to congressional policy restricting campaign contributions and political activities by government officials. We are not dealing here however, with campaign contributions made by one person to further the candidacy of another. Besides, Congress has not attempted to regulate expenditures of candidates for state office. I can hardly conceive that we should infer that it wanted to penalize through its tax laws, necessary campaign expenses, and thereby condemn a practice of campaigning that is as old as our country and which exists in every state of the Union. Unless our democratic philosophy is wrong, there can be no evil in a candidate spending a legally permissible and necessary sum to approach the electorate and enable them to pass an informed judgment upon his qualifications. This is not, of course, to be taken as denoting approval of corrupt campaign expenditures, or of any of the myriad abuses which beset our systems of election. But we ought not to eviscerate a revenue act, and deny this state official a deduction for expenses incurred in a state election campaign, because Congress has limited campaign contributions in federal elec-

[10] Cf. United States v. Pyne, 313 U. S. 127. If the petitioner is to be denied the benefit of the deduction under the 1942 Amendment (Section 121(a)(2)) on the ground that these expenses were incurred in a "business", then it is difficult to understand why he should be denied the deduction under Section 23(a)(1)(A) of the Internal Revenue Code, which provides deductions for expenses incurred in carrying on a business. On the one hand, the Court denies the deduction because the expenses were incurred in relation to a "business"; on the other hand, the Court denies the deduction as a "business expense" on the ground that his expenses "were not incurred in 'carrying on' his 'business'". This is a distinction without a difference, two phrases with but a single thought.

tions, and passed restrictive legislation against political activities by federal employees.

The Tax Court too relied upon grounds of public policy. It thought it contrary to "the basic ideology underlying the principles of government" to hold that a public office constitutes a "trade or business", although Congress for tax purposes had declared it was. The Tax Court also thought that "under the ban of conscience and . . . public policy is the contention that expenditures made to promote one's candidacy for public office represent expenses 'paid . . . for the production or collection' of income.'" Public officials in this country, many of whom must campaign for election, are almost universally paid for their services. That we do pay our public servants is not at all inconsistent with the fact that public service in a large measure represents an honest expression of the social conscience. Nor does individual dependence upon remuneration for such services detract at all from the high and uncompromising standards of those who perform public duties. Without monetary rewards office-holding would necessarily be limited to one class only, the independently wealthy. Proposals to accomplish such a purpose were deliberately rejected at the very beginning of the Nation's history. I deny the existence of a public policy which, while permitting Congress to tax the income of elected public officials, bars Congress from allowing a deduction for necessary campaign expenses.

It is said that *Dobson* v. *Commissioner*, 320 U. S. 489, gives some support to the Court's decision, and that we should not "displace the views of the Tax Court with our own." Cf. *Security Mills Co.* v. *Commissioner*, 321 U. S. 281. The Court's opinion does exactly that, for it rests in part upon its holding that McDonald as a judge was engaged in "business", while the Tax Court specifically found that he was not. Neither the *Dobson* case nor any other to which the Court's opinion points has indicated that we should automatically accept the Tax Court's construction of a statute, while repudiating the reasons on which its conclusion rested.

State officials all over this nation have been subject to federal income taxes since 1939. When they run for office they must necessarily spend some money to advertise their campaigns. We permit private individuals to deduct expenses incurred in advertising to get business. If this petitioner had owned a factory

the operations of which were suspended because of war contracts, and had advertised goods which he could not presently sell, the expenses of such advertising would have been deductible under Treasury rulings.[2]

So long as campaign expenses spent by candidates are legitimate, ordinary, and necessary, I am unwilling to assume that Congress intended by the 1942 Act to discriminate against the thousands of state officials subject to federal income taxes. The language Congress used literally protects petitioner's right to a deduction; nothing in the legislative history indicates an intent to deny it. Certainly there are abuses in campaign expenditures. But that is a problem that should be attacked squarely by the proper state and federal authorities, and not by strained statutory construction which permits a discriminatory penalty to be imposed on taxpayers who work for the states, counties, municipalities, or the federal government. I think we should reverse and remand this cause to the Tax Court with instructions to pass upon the factual questions which it did not previously determine.

Mr. Justice REED, Mr. Justice DOUGLAS, and Mr. Justice MURPHY join in this dissent.

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[2] I. T. 3581, 1-2 Cum. Bull. 88 (1942); I. T. 3564, 1-2 Cum. Bull. 87 (1942). The following types of expenses have been held to be deductible as business expenses: "... payments by brewers to associations to combat prohibition; railroad contributions to an association conducting a campaign to create favorable public opinion; fees paid to organizations to avoid labor trouble and combat unionization, and also union dues; payments to a fund to fight the boll weevil by a taxpayer in the cotton business; membership fees or dues paid by individuals or corporations to a chamber of commerce or board of trade where the membership is employed as a means of advancing the business interests of the individual or corporation; ... contributions to a chamber of commerce engaged in stimulating and expanding local business; assessments paid by member banks to a clearing house association as a means of furthering their business interests, as well as amounts to be distributed by the association to civic organizations for building up local trade; payments to organizations designed to expand trade; and membership dues paid associations organized to promote the business interests of the members by the collection and dissemination to its members of information and statistics." 4 Mertens, Law of Federal Income Taxation, 505-7, and cases therein cited. For further analogous business expense deductions, see 4 Mertens, *ibid.*, chapter 25.